

Washington State Puts Environmental Justice At The Forefront

By **Ankur Tohan, Endre Szalay and Matthew Clark** (July 5, 2023)

Washington state's executive and legislative branches have come together to form one of the more progressive frameworks to address environmental justice in the U.S.

Two pieces of legislation passed in 2021 form the bulk of this framework: the Healthy Environment for All Act and the Climate Commitment Act. Together, the HEAL Act and the CCA create an intricate web of environmental justice regulation — all of which became enforceable by July 1.

The HEAL Act

In 2021, the Washington Legislature passed the HEAL Act — the state's first statewide law to coordinate an approach to address environmental justice. The law requires seven state agencies to address environmental health disparities in overburdened communities and underserved populations.[1]

Those agencies have been given multiple directives under the HEAL Act. For instance, each agency was required to develop and incorporate a community engagement plan by July 1, 2022, to be implemented by July 1 of this year.[2]

Most notably, when considering significant action initiated after July 1, an agency covered by the HEAL Act must conduct an environmental justice assessment, or EJA, both to inform and support the agency's consideration of overburdened communities and vulnerable populations, and to assist the agency with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities.[3]

The HEAL Act also requires covered agencies to establish a goal to allocate 40% of grants and expenditures that create environmental benefits to vulnerable populations and overburdened communities.[4]

While stepping stone measures were required in the years immediately following passage of the HEAL Act, implementation of the environmental justice measures began in a major way this month.

The CCA

On the same day that the HEAL Act was signed into law, Washington Gov. Jay Inslee also added his signature to the CCA.

The CCA implements an economywide cap and invest system to work toward the state's goal of net-zero emission by 2050, with enforceable greenhouse gas emission reductions required in 2023.



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Going one step further, the CCA requires that each year or two, when allocating funds accrued in the various state treasury accounts tied to the cap and invest framework, covered agencies must conduct an EJA, similar to that of the HEAL Act.[5]

Each covered agency must also establish a minimum threshold of 35% of its total investments that provide direct and meaningful benefits to vulnerable populations.

Environmental Justice Assessments

In an effort to compel state agencies to consider environmental justice in their decision-making process, agencies are required to complete an EJA under both the HEAL Act and the CCA.[6]

The Washington Legislature developed an environmental justice checklist that covered agencies must consider in their analysis. The checklist requires an agency to take the following steps:

- Consider guidance prepared by the Environmental Justice Council relating to best practices on EJAs;
- Assess cumulative environmental health impact analysis, including the environmental health disparities map or other data that considers the effect of proposed actions on overburdened communities or vulnerable populations;
- Identify overburdened communities and vulnerable populations who are expected to be affected by the proposed action and the potential environmental and health impacts;
- Determine if the proposed action is expected to have any local or regional impacts to federally reserved tribal rights and resources, including, but not limited to, those protected by treaty, executive order or federal law;
- Summarize community input and how the covered agency can further involve overburdened communities, vulnerable populations, affected tribes and indigenous populations in development of the proposed action; and
- Describe options for the agency to reduce, mitigate or eliminate identified probable impacts on overburdened communities and vulnerable populations, or provide a justification for not reducing, mitigating or eliminating identified probable impacts.[7]

To accomplish those requirements, the Legislature directs covered agencies to solicit feedback from "members of overburdened communities and vulnerable populations to assist in the accurate assessment of the potential impact of the action and in developing the means to reduce or eliminate the impact on overburdened communities and vulnerable populations." [8]

However, when completing the environmental justice checklist, covered agencies are not required to conduct "novel quantitative or economic analysis of the proposed significant agency action." [9]

Beyond completion of the environmental justice checklist, covered agencies also must consider each of the following methods for reducing environmental harms or equitably distributing environmental benefits:

- Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;
- Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;
- Preventing any action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;
- Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of significant agency actions;
- Prioritizing equitable distribution of resources and benefits to overburdened communities;
- Promoting positive workforce and job outcomes for overburdened communities;
- Meeting community needs identified by affected overburdened communities;
- Modifying substantive regulatory or policy requirements; and
- Implementing other mitigation techniques, including those suggested by the council, the office of equity, or representatives of overburdened communities and vulnerable populations.[10]

If the covered agency determines it does not have the ability or authority to avoid or reduce any estimated environmental harm on overburdened communities and vulnerable populations, or address the distribution of environmental and health benefits, then that agency is required to provide "a clear explanation of why it has made that determination and provide notice of that explanation to members of the public who participated in the process for the significant agency action or the process for the environmental justice assessment," among other things.[11]

Conclusion

The HEAL Act and CCA have created a regulatory framework that makes environmental justice a key state priority. More information about what geographic areas are considered vulnerable populations can be found on the "What's in my Neighborhood?" map, which tracks health disparities as determined by the state government.[12]

As of this month, the Washington Department of Ecology will limit EJAs to the express list of significant agency actions in the statute: developing new rules, new grant or loan programs, awarding grants or loans, or agency request legislation.

However, the department did solicit comments from the public from May 1 to June 30 as to

what other types of actions should require EJAs starting in 2025. Such actions could include permits.[13]

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[1] The HEAL Act applies to covered agencies, which includes the Department of Ecology, the Department of Health, the Department of Natural Resources, the Department of Commerce, the Department of Agriculture, and the Department of Transportation; the Puget Sound Partnership; and any agency willing to opt in to the HEAL Act. RCW 70A.02.010(2).

[2] RCW 70A.02.040(1).

[3] RCW 70A.02.060(1)(a). Significant agency action includes legislative rules, new grant or loan programs, and large capital and transportation projects, including related grants or loans. Other actions could be designated by an agency no later than July 1 of this year. RCW 70A.02.010(12). Note that the sale of timber from state lands and state forestlands does not require an EJA under the HEAL Act. RCW 70A.02.060(7).

[4] RCW 70A.02.080(2)(e).

[5] RCW 70A.65.030(1)

[6] See RCW 70A.02.060; see also RCW 70A.65.030.

[7] See RCW 70A.02.060.

[8] RCW 70A.02.060(5).

[9] Id.

[10] RCW 70A.02.060(6).

[11] RCW 70A.02.060(7).

[12] <https://apps.ecology.wa.gov/neighborhood/?lat=47.500000&%3Blon=-121.000000&%3Bzoom=7&%3Bradius=false&lon=-121.000000&zoom=7&radius=false>.

[13] See Wash. Dep't of Ecology, Implementing the HEAL Act, <https://ecology.wa.gov/Events/ProgA/Environmental-Justice/EJ-Assessments>.