

How States Are Advancing Enviro Justice Policies

By **Michael Leslie, Erich Almonte and Douglas Henderson** (February 10, 2026, 5:30 PM EST)

Over the last year, environmental justice as a concept has faced federal dormancy, brought on by executive branch reversals and agency directives that have swept long-standing federal EJ frameworks from the formal policy ledger.

Yet beneath that surface lull, EJ remains very much alive in state law, local planning, community practice, litigation by environmental advocacy groups, and the marketplace of ideas.

The result in 2025-2026 is a bifurcated landscape: At the federal level, efforts to terminate, constrict or recast EJ as "illegal discrimination" have chilled agency practice and funding; at the state and local levels, especially in so-called blue states, EJ programs are expanding, hardening into permitting mandates, and attracting sustained institutional and community investment.

The **first installment** of this article analyzed the decisive shift in federal EJ policies and actions that occurred in early 2025 with the inauguration of President Donald Trump.

This installment discusses how states, municipalities, tribal nations and private organizations continue to advance EJ through public engagement, cumulative impacts analysis, community benefits agreements, climate resilience investments, permitting decisions and enforcement approaches that focus on affected communities.

The States: Where the Action Is

Many states are moving ahead on the EJ front. Several states have developed and implemented statutes, screening tools, permitting standards and enforcement practices that embed procedural and substantive EJ requirements — with particular salience for energy infrastructure and related land uses.

In some jurisdictions, EJ triggers heightened review or participation; in others, cumulative and disparate impacts analyses are obligations that must be considered in permitting and key facility siting decisions, including the authority to deny permits in overburdened areas absent compelling need or adequate mitigation.

But it's not just a state here and there — states are also coordinating regionally. In June 2025, 13 state



Michael Leslie



Erich Almonte



Douglas Henderson

attorneys general issued the Multi-State Guidance Affirming the Importance and Legality of Environmental Justice Initiatives, detailing legal bases for EJ under the U.S. Constitution, civil rights statutes and federal environmental laws; cataloging lawful strategies spanning education, public participation, burden analysis, pollution prevention, climate resilience and enforcement; and reaffirming EJ's necessity for public health and welfare.

A 2025 multistate research white paper finds at least 34 states now incorporate EJ in law in some fashion, with growing — though uneven — attention to energy justice.[1] Even where "energy" is not named, energy facilities are often central to EJ frameworks given their historic burdens, from fossil-fired generation to pipeline compressor stations.

Many states use EJ definitions, screening tools and mapping to identify overburdened communities, then layer procedural and substantive protections onto environmental and siting reviews. Here are a few examples:

Colorado continues to develop and enforce policies requiring cumulative impacts analysis and targeted interventions.[2] After establishing an EJ Action Task Force, Colorado created an Office of Environmental Justice within the Colorado Department of Public Health and Environment to direct environmental equity and cumulative impact analyses in disproportionately impacted communities and to steer resources and oversight toward high-risk areas, including enhanced responses to refinery complaints and cross-media pollution reviews.

Illinois is also codifying and tightening EJ-informed permitting. The Illinois Environmental Protection Agency is drafting statutory language to formalize the agency's EJ policy and procedures[3] — proposing heightened review for census tracts above a 25th-percentile environmental indicator threshold, supported by its environmental justice start mapping tool — and has implemented enhanced public participation obligations under a recent informal resolution agreement.[4]

Maryland is similarly institutionalizing interagency EJ governance. Maryland Gov. Wes Moore's VOICE Order requires agencies to use Maryland's EJ mapping tool, MDEnviroScreen, to "track and address disparities related to environmental hazards, exposures, risks, health outcomes, investments and benefits." [5] Critically, the council is tasked with developing enhanced public participation plans for communities with EJ concerns potentially affected by certain resource extraction, waste management, and industrial and manufacturing processes and activities. The VOICE Order also created an Interagency Environmental Justice and Equity Advisory Council to coordinate spending and these EJ efforts, with technical assistance for local governments and concrete recommendations to address disparate impacts.

As it has in the past, Massachusetts is channeling enforcement proceeds to EJ communities. The Commonwealth launched an Environmental Justice Trust, funded by penalties in environmental cases, with awards directed to restore impacted resources, support community health, and underwrite research and mitigation in disadvantaged areas; settlements in 2025 have already begun capitalizing the trust.[6]

Michigan is also considering cumulative-impacts permitting. Proposed legislation would require Michigan's Department of Environment, Great Lakes and Energy to consider cumulative health and pollution burdens through the MiEJScreen tool, authorize permit denials absent compelling need where impacts to overburdened communities are negative, and mandate robust, multilingual public notice and project impact statements.[7]

New York is funding community-led EJ work and mainstreaming EJ in climate policy. New York's Office of Environmental Justice continues community impact grants and public engagement initiatives, while the state's Climate Leadership and Community Protection Act prioritizes climate investments in disadvantaged communities — reflecting the state's view that EJ is a guiding principle in adapting to and mitigating climate risk.[8]

Virginia, Pennsylvania and Connecticut illustrate the spectrum of procedural EJ tools. Virginia's Department of Environmental Quality issued draft guidance creating "permits of concern" within EJ communities, and requiring "meaningful involvement" through added outreach, meetings, tours, and accessible hearings;[9] Pennsylvania's EJ policy, which was finalized on Jan. 3, sets forth the criteria for identifying EJ areas, utilizes its PennEnviroScreen mapping tool, requires enhanced public participation and sets forth public participation strategies, requires plain language materials, and addresses early community engagement for "Trigger" and "Opt-In" projects;[10] Connecticut mandates EJ impact assessments and consultations that can culminate in community environmental benefits agreements.[11]

New Jersey is defending first-in-nation EJ permitting rules. The New Jersey Department of Environmental Protection's 2020 EJ Law prohibits permits contributing more than de minimis pollution to a disproportionate burden.[12] Appellate arguments recently tested the scope of NJDEP's implementing rules (e.g., "zero population blocks," definitions and stressor thresholds), with regulated entities contesting predictability and procedure.

On Jan. 5, the New Jersey Superior Court Appellate Division issued a lengthy opinion in *In the Matter of the Adoption of N.J.A.C. 7:1C*,[13] upholding New Jersey's EJ Law, including the requirements for public participation and an EJ impact statement, the use of New Jersey's EJMAP tool, NJDEP's EJ Rules, statutory definitions, stressor thresholds, and EJ permitting mitigation measures.[14] This case is a harbinger demonstrating that state EJ laws and regulations are becoming part of both regulatory requirements and the case law landscape.[15]

Practical Realities

EJ remains deeply embedded in the market of ideas — even as federal agencies retreat from this concept. Companies, investors, researchers, public health agencies, cities and community organizations continue to generate and apply EJ knowledge in project planning, transaction diligence, enforcement priorities and disclosure practices.

The Multi-State Guidance reinforces arguments that EJ strategies — public engagement, data collection, mapping, mitigation and community benefits — are lawful and aligned with civil rights and constitutional norms, which makes them resilient to executive oscillation.

The research pipeline is robust. Academic and policy analyses charting state EJ law, energy justice intersections, mapping methodologies, and procedural/substantive levers continue to proliferate. The 2025 state EJ white paper synthesizes how states define EJ communities, deploy screening tools, and trigger heightened reviews, with specific attention to energy infrastructure. It documents that while relatively few states expressly define "energy justice," energy sector facilities are inherently captured within EJ frameworks and are increasingly targeted for procedural protections and, in some places, substantive limits.

Likewise, public health and sustainability research continues to develop evidence of disproportionate burdens and climate vulnerability. The University of Michigan's EJ fact sheet highlights inequalities in pollution exposure, energy burden, and climate risk, and summarizes federal initiatives since 2021 — while noting their rescission in 2025 — reinforcing why state and local action is filling the gap.[16] The fact sheet also catalogs community-level strategies, including data tools and bottom-up research models that complement formal regulatory processes.

For major projects, EJ diligence remains prudent risk management. Even where federal enforcement screens are disabled and former federal policies have been rescinded, various state and local EJ triggers, mapping tools and cumulative-impacts practices persist, and many require enhanced public participation or could lead to permit denial absent mitigation.

Developers should assume EJ will resurface over a multiyear permitting horizon — especially if the political pendulum swings back. Using state tools such as CalEnviroScreen, MDEnviroScreen, Pennsylvania EJ Areas, Virginia EJScreen+, Colorado EnviroScreen, and analogous mapping dashboards supports early identification of community context and informs meaningful engagement and mitigation design.

While low-key, state EJ enforcement and remedies are real. Massachusetts' EJ Trust demonstrates an emerging model in which penalties are directed into community health and environmental restoration in impacted neighborhoods. Illinois is tightening EJ gatekeeping in permitting. Colorado is institutionalizing cumulative impacts analyses that will direct oversight and funding. These trends indicate that EJ considerations will affect timelines, conditions and feasibility — especially for energy and industrial projects — regardless of federal posture.

The practical legal backdrop also favors continued EJ integration by private parties. The Multi-State Guidance argues that First Amendment and nonprofit law protect advocacy and public education; civil rights laws require language access and evenhanded program administration; and state police powers authorize public health regulation, including participation and burden-reduction measures in permitting, land use and infrastructure planning.

Private EJ enforcement programs by environmental and citizen groups tied to fair treatment, meaningful involvement, and cumulative burden reduction can be expected to continue — and even increase — even as federal oversight recedes.

Conclusion

As an idea — with a practical set of tools — EJ is too interwoven into state law, local planning, institutional practice, and civil society to disappear with a single political cycle. The federal pullback creates uncertainty and impedes cross-jurisdictional coordination, but the response in certain states has been swift, detailed, and grounded in durable legal authorities.

Policymakers and practitioners across the country continue to publish, refine and deploy EJ definitions, screens, mapping, cumulative impacts analyses, climate resilience investments, and community-centered enforcement remedies.

The conflict between federal EJ policies and EJ policies and requirements in so-called red and blue states can put businesses and projects in a vice-grip of competing requirements. The bottom line is that knowledge of the laws and policies of the particular state where a project is located is critical to EJ

analysis of the project and related permitting and litigation risks.

EJ also remains part of the broader corporate and investment market, reflected in risk assessment, project design, disclosure and stakeholder engagement — because community context, pollution burdens and climate vulnerability are material to permitting, schedule, cost and social license. That reality will likely endure regardless of federal nomenclature.

And because the political pendulum can swing back in the near future, planning with EJ in mind is not merely legal, social or ethical; it is a strategic hedge against regulatory whiplash. A prudent course for any major project, particularly in the energy and industrial sectors, is to evaluate EJ early, engage communities meaningfully, design mitigations responsive to cumulative burdens, and prepare for state-level procedural and substantive requirements that are increasingly the locus of action.

EJ is in a federal dormancy, but it is far from six feet under. It is evolving — through state statutes, local planning, community-led initiatives, and a steady stream of research and enforcement practice — into a more decentralized, legally grounded, and operationally consequential field.

The question is not whether EJ will matter in three years — it is whether today's projects are built to withstand the return of federal attention and the steady march of state-level EJ law that has already arrived.

Michael Leslie, Erich Almonte and Douglas Henderson are partners at King & Spalding LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] <https://celp.psu.edu/wp-content/uploads/2025/04/Energy-in-Environmental-Justice-Across-the-States-FINAL-4-21-25.pdf> (accessed January 12, 2026).

[2] <https://cdphe.colorado.gov/apens-and-air-permits/environmental-justice-in-air-permitting> (accessed January 12, 2026).

[3] <https://epa.illinois.gov/topics/environmental-justice/ej-policy.html> (accessed January 12, 2026).

[4] <https://epa.illinois.gov/topics/environmental-justice/ejppp/enhanced-public-participation-plan.html> (accessed January 12, 2026).

[5] [https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/89/EO%2001.01.2025.17%20Valuing%20Opportunity,%20Inclusion,%20and%20Community%20Equity%20\(VOICE\)_Accessible.pdf](https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/89/EO%2001.01.2025.17%20Valuing%20Opportunity,%20Inclusion,%20and%20Community%20Equity%20(VOICE)_Accessible.pdf) (accessed January 12, 2026).

[6] <https://www.mass.gov/news/ag-campbell-announces-settlements-requiring-first-deposits-into-environmental-justice-trust> (accessed January 12, 2026).

[7] <https://michiganadvance.com/2025/07/30/michigan-lawmakers-renew-push-for-bills-tackling-cumulative-pollution-in-vulnerable-communities/> (accessed January 12, 2026).

[8] <https://dec.ny.gov/environmental-protection/environmental-justice> (accessed January 12, 2026).

[9] [https://greenport.pa.gov/elibrary/GetDocument?docId=10506929&DocName=01%20ENVIRONMENTAL%20JUSTICE%20POLICY.PDF%20%20%3Cspan%20style%3D%22color%3Agreen%3B%22%3E%3C%2Fspan%3E%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E\(NEW\)%3C%2Fspan%3E](https://greenport.pa.gov/elibrary/GetDocument?docId=10506929&DocName=01%20ENVIRONMENTAL%20JUSTICE%20POLICY.PDF%20%20%3Cspan%20style%3D%22color%3Agreen%3B%22%3E%3C%2Fspan%3E%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E(NEW)%3C%2Fspan%3E) (accessed January 15, 2026).

[10] <https://www.pa.gov/agencies/dep/public-participation/office-of-environmental-justice/ej-policy> (accessed January 12, 2026).

[11] <https://portal.ct.gov/deep/environmental-justice/environmental-justice-law-regulations-development> (accessed January 12, 2026).

[12] <https://dep.nj.gov/ej/law/> (accessed January 12, 2026).

[13] IN THE MATTER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S APRIL 17, 2023, 55 N.J.R. 661(b) "ENVIRONMENTAL JUSTICE RULES," ADOPTED AMENDMENTS N.J.A.C. 7:1C ET SEQ., SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION, DOCKET NOS. A-2936-22; A-2959-22, January 5, 2026.

[14] <https://www.njcourts.gov/system/files/court-opinions/2026/a2936-22a2959-22.pdf> (accessed January 14, 2026).

[15] See also, *Inclusive Louisiana v. St. James Parish*, 134 F.4th 297, United States Court of Appeals for the Fifth Circuit, Case No. 23-30908, filed April 9, 2025.

[16] https://css.umich.edu/sites/default/files/2025-09/CSS17-16_0.pdf (accessed January 12, 2026).