Draft 3- Environmental Justice Action Task Force Recommendations

About the Task Force

The Environmental Justice Action Task Force ("EJATF" or "Task Force") was created by the Colorado Environmental Justice Act (HB21-1266). Governor Polis, the legislature, and the Ute Mountain Ute and Southern Ute Tribal governments can appoint up to 27 members to the Task Force. There are currently 22 Task Force members.

The Environmental Justice Act requires the Task Force to hold at least six public meetings. The Task Force has held five public meetings so far. The next Task Force meeting will be on October 24 and 25. The final Task Force meeting will be on November 9 and 10. The Task Force also has six subcommittees. Each subcommittee will meet at least one more time prior to November.

The Environmental Justice Act instructs the Task Force to consider developing recommendations on a variety of topics. The Task Force will present these recommendations to the legislature, the Governor, and the Colorado Department of Public Health & Environment ("CDPHE"). The Task Force must finalize the recommendations by November 14, 2022.

- Learn more about the Task Force and its members on the Environmental Justice Webpage
- Review the Task Force's Scope of Work
- View all of the Task Force's documents in its public Google Drive folder
- Watch recordings of Task Force meetings on CDPHE's YouTube channel

About This Document

This document summarizes ideas that Task Force members have raised during prior meetings and subcommittee meetings, along with feedback provided through public comment. The Task Force is still working on the potential draft recommendations. Task Force members voted in informal straw polls at the August 25 meeting about some recommendations. If 2/3 of the Task Force members voted in favor of a concept in a straw poll, the section headings for that concept states "preliminary consensus." No final votes have occurred. **The potential recommendations in this document thus do not represent the opinion of the full Task Force**. At the November meeting, Task Force members will take a final vote on the draft recommendations. A 2/3 majority vote is required for a recommendation to become an official recommendation of the Task Force in its final report. Concept that do not have the support of the full Task Force may still be included as a minority report if 20% of Task Force members vote in favor of the concept.

An earlier draft (Draft 1) of the recommendations was released for public comment on June 24. You can view all public comments the Task Force received on Draft 1 here. A summary of the survey results is available here. CDPHE staff compiled input from public comment and feedback received from state agencies into an updated Draft 2 of the recommendations that the Task Force reviewed at its August 25 meeting. CDPHE staff then integrated feedback from the Task Force at its August 25 meeting into this document–Draft 3 of the recommendations. This Draft 3 Recommendations document is intended for review and comment by the public. **Public comments are due at 11:59 p.m. on October 14, via email to cdphe_ej@state.co.us.**

This document groups together recommendations from each of the Task Force's subcommittees. Additionally, a new section has been added to discuss the concept of an Environmental Justice Coordinating Entity that was suggested by several commenters.

Keep in Mind While You Review

At this stage, the Task Force is focused on providing additional detail around ideas that have already been discussed. It is unlikely that there will be enough time to flesh out new ideas with enough detail to incorporate them as final recommendations. Public commenters should thus focus on adding details to ensure the recommendations are clear, specific, and implementable.

Public commenters should also keep the following principles in mind when reviewing and providing feedback on the document, to ensure that comments are most useful to the Task Force:

- **Clarity**: Clear definitions and scope will ensure the recommendations can be successfully implemented to provide tangible benefits to disproportionately impacted communities. Agencies must understand which recommendations may apply to their program(s) and be able to tailor the recommendations to the particular context of their work.
- **Prioritization:** The draft recommendations are expansive in scope and will take time to implement. The Task Force will consider identifying which recommendations are a higher priority to implement in the near term to help agencies balance the work that is needed with the funding that is available. Where possible, the Task Force may identify timelines and proposed timing for implementing specific recommendations.
- **Integration:** The Task Force recommendations should account for, and where appropriate, be aligned with existing work that agencies are doing to promote environmental justice. Recognizing and building on existing work rather than creating new programs or projects will help agencies implement recommendations faster.
- **Flexibility and Variability:** Concrete directives to promote environmental justice are critical. However, flexibility is also important for agencies to be able to implement recommendations because agencies take many different types of actions to address a range of issues. Similarly, not all disproportionately impacted communities are the same, and they face many different types of environmental threats. The Task Force is working to ensure that recommendations include appropriate flexibility for individual agencies to successfully implement them in ways that meet the unique needs of different disproportionately impacted communities.
- **Resources:** Many draft Task Force recommendations recognize the person power that agencies will need to implement the recommendations. The Task Force is considering these workload impacts and the funding necessary to achieve its recommendations.
- **Local Governments:** Many of the Task Force draft recommendations will have important implications for local governments. The Task Force is considering how local governments will play a role in implementing each recommendation so that they can appropriately contribute to solutions to advance environmental justice.
- **Other States**: Several public commenters recommended that the Task Force consider how other states have implemented similar policies, and shape recommendations around lessons learned or examples that other states have successfully implemented.

Section 1: Environmental Justice Coordinating Entity [Preliminary Consensus]

A single coordinating entity, such as an Office of Environmental Justice or a similar role, could be created to coordinate environmental justice efforts across agencies. Currently, multiple state agencies including CDPHE, the Colorado Department of Transportation ("CDOT"), and Colorado Energy Office ("CEO") have dedicated staff focused on environmental justice and equity. The Colorado Oil and Gas Conservation Commission ("COGCC") and the Public Utilities Commission ("PUC") are also working to implement equity and environmental justice requirements. Each agency has different missions, processes, objectives, and authorities, and takes different types of actions. An Environmental Justice Coordinating Entity could help coordinate and build efficiencies between these agencies by coordinating environmental justice efforts across state government.

Even if the Environmental Justice Coordinating Entity is created, other state agencies would still need to have the ability and resources to hire their own staff to work on environmental justice matters. The Environmental Justice Coordinating Entity should not take decision making authority away from existing state agencies. It should not have regulatory authority. Rather, it should help coordinate efforts to integrate environmental justice across agencies and provide all state agencies with access to data, resources, and information about best practices for community engagement and cumulative impacts in disproportionately impacted communities.

As discussed below in more detail, potential roles for the Environmental Justice Coordinating Entity could include:

- Overseeing the creation of centralized equity and cumulative impacts analyses.
- Providing centralized resources and information on best practices for community engagement across state agencies.
- Coordinating data sharing efforts on environmental justice data projects between agencies
- Providing an ongoing forum for state agencies to share information and practice about implementing equity and environmental justice, so that this information sharing continues after the work of the Task Force is complete.
- Coordinating funding, creating standards, and overseeing participatory science research..
- Proactively identifying federal funding opportunities, like the EPA's Justice40 grants, and working with potential grantees to provide technical assistance on their applications.
- One potential role for the Environmental Justice Coordinating Entity could be intervening in PUC proceedings that are relevant to environmental justice topics. The Task Force would appreciate receiving feedback from the public about whether this would be an appropriate and useful role for the Coordinating Entity, and, if so, whether it should have intervention-by-right status at the PUC.

Section 2: Environmental Equity & Cumulative Impacts Analysis

The Task Force has discussed two approaches for an equity and cumulative impacts analysis. First, individual agencies conducting a cumulative impact analysis as part of the decision making process for specific agency actions, similar to the approaches adopted by other states and Colorado state agencies. Second, centralized environmental equity analyses that consider cross-media (air, water, soil, radiation, etc.) cumulative impacts for a specific area, which individual agencies later apply in specific decisions. During the August 25 meeting, the Task Force conducted a straw poll. 8 Task Force members voted for centralized equity analyses, 2 Task Force members voted for project-specific equity analyses, and 2 Task Force members abstained. Although the Task Force is generally in support of the centralized equity analysis approach, it would welcome public comment on how the centralized analyses should be implemented by individual agencies when making specific decisions.

Because the Task Force is generally in favor of the centralized equity analysis approach, this Draft 3 of the Task Force recommendations only discusses that approach. Under this approach, there would be centralized equity analyses created for individual regions. Then individual agencies could reference and implement the centralized equity analyses in case-by-case decisions that impact the area.

Centralizing the process through a single analysis for a specific area can create efficiencies for all users, and for community engagement. It would require significantly less resources to conduct a single centralized analysis for a region rather than individual agencies needing to conduct analyses on their own for specific decisions. The centralized analysis would give individual agencies the tools they need to understand what stressors are driving cumulative impacts in an area. The centralized analysis also ensures all agencies are operating based on the same data, and creates opportunities for data sharing and coordination between agencies. However, even though the analyses would be created in a centralized manner, it is important for individual agencies to have flexibility to be able to implement the analyses in a manner that works for them. The Task Force recognizes that it will take time to conduct centralized equity analyses, and that it may be appropriate for agencies to start implementing components of the analyses before they are completed.

Section I below discusses the process and mechanics of creating centralized equity analyses, and Section II discusses how agencies could implement them.

I. Process and Mechanics of Developing Centralized Equity Analyses

A. Who Should Conduct the Equity Analyses

The state should seek to have the equity analyses, and updates to the equity analyses, conducted by an independent third party consultant, university, or academic institution. The consultant or academic institution should be selected through and overseen by an interagency council with representation from multiple state agencies with opportunities for input from local governments, representatives of disproportionately impacted communities, and other

stakeholders. If an Environmental Justice Coordinating Entity is created, it can facilitate the selection process by the interagency council.

The Task Force would welcome public comment about whether multiple consultants or academic institutions should conduct separate analyses for different geographic areas, or whether all analyses should be conducted by the same consultant or academic institution.

B. Purpose of the Equity Analyses

Equity analyses should support a goal of providing information to ensure that state agency decisions, including decisions about energy and infrastructure investments, do not perpetuate a history of environmental racism and instead address past harms by providing benefits to impacted communities that improve environmental health and livability.

C. Audience for the Equity Analyses

The primary target audience for equity analyses are state agencies using the analyses in decision making. Local governments are also a critical audience for the equity analyses, as they may also use the equity analyses to guide their decision making and may not have the resources to conduct equity analyses on their own. Local governments may also receive the benefits of state actions, be directly affected by state actions, or work in partnership with the state on actions affected by the analyses.

However, in addition to state and local government agencies, the analyses should be accessible to and understandable by community members and regulated industry. The consultant or academic institution that develops the equity analyses should ensure they are crafted to be comprehensible and easily utilized by all of these parties. Accessibility includes ensuring that the data supporting the analyses is transparent and readily available to communities. To ensure the analyses are understandable, if the Environmental Justice Coordinating Entity is created, it should have staff dedicated to communicating the contents of the equity analyses in a less technical manner that is more comprehensible to the general public.

D. Locations Where the Equity Analyses Should be Conducted

A centralized equity analysis should be conducted for areas that meet the definition of disproportionately impacted community. However, there should not be a separate analysis for every area that meets the definition of a disproportionately impacted community. There should be flexibility for the entity coordinating the analyses, likely the Environmental Justice Coordinating Entity, to determine how many analyses should be conducted, and how to establish the geographic scope of each analysis. Colorado EnviroScreen can be used as a tool to prioritize areas where equity analyses should be conducted, based on existing data.

The Task Force recommends that the geographic scope of an individual centralized equity analysis should be a regional grouping of surrounding disproportionately impacted communities. The analysis would focus on census block groups that meet the definition of disproportionately impacted community within an area. A majority of Task Force members voted in favor of this

geographic scale in a straw poll during the August 25 meeting, but there was not 2/3 support for this concept. The Task Force would thus welcome public comment on this topic.

To determine the boundaries of a centralized equity analysis, the Environmental Justice Coordinating Entity could apply principles akin to the constitutional redistricting provision that defines communities of interest. A community of interest is a neighborhood, community, or group of people who have common policy concerns and would benefit from being considered together in a single centralized equity analysis. Another way of understanding a community of interest is that it allows a community to define itself and tell its own story about what neighbors share in common, and what makes it unique when compared to surrounding communities.

E. Community Engagement

The community that is the subject of an equity analysis should inform and be thoroughly engaged in the process of creating the analysis. The analysis should also help inform the community, creating a feedback loop. The entity conducting the equity analyses should consider opportunities to collaborate with local educational institutions in the process of developing each equity analysis.

Local governments and local public health agencies in the relevant area should be fully included, active participants in the process of developing the equity analyses to ensure consistency with local government land use priorities. Local governments and local public health agencies should be active partners in developing the equity analyses. The consultant or academic institution conducting the analyses should solicit input from local government officials.

The consultant or academic institution conducting the equity analyses should collect information from community members through various means. Options could include town halls, social media, and by partnering with local public health agencies. The information should include both quantitative and qualitative data about the community's lived experience, which can each be used to appropriately inform different components of the equity analyses. Qualitative or anecdotal information can be aggregated (e.g. community interview summaries) to help make the information more useable in guiding agency decisions. Information can also be gathered from community health surveys that are already administered by local public health agencies.

F. Timeline and Updates

The timeline for each equity analysis should recognize the impacts communities are currently experiencing while also recognizing the time necessary to conduct a thorough analysis that agencies can successfully implement.

The legislature should fund periodic updates to equity analyses to reflect new data and changing conditions. The legislature should specify how frequently updates should occur.

II. Use and Application of Completed Centralized Equity Analyses

A. Who Should Use the Equity Analyses

At the August 25 meeting, the Task Force conducted a straw poll about which agencies should apply the centralized equity analyses. 4 Task Force members voted for Option 1, 6 Task Force members voted for Option 2, 2 Task Force members voted for Option 3, and 2 Task Force members abstained. As a result, the Task Force will continue discussing these options, or some combination of these options, and would welcome public comment on this topic.

i. Option 1: all state agencies that take actions that can impact the environment.
ii. Option 2: a specific list of state agencies that the Task Force will identify in future conversations.
iii. Option 3: a pilot program of one or two state agencies to ensure that the equity analyses can be successfully implemented in one to four specific decision making processes or proceedings.

Where necessary and appropriate, state agencies should work together and create alignment in implementing the equity analyses, building on the example of COGCC collaborating with other agencies like CDPHE and CPW when making permitting decisions.

B. How the Centralized Equity Analyses Should Be Applied

Individual agencies should tier to the equity analysis for the relevant area when making agency-specific decisions. Agencies should have flexibility to incorporate parts of an equity analysis into specific decisions where those factors are relevant, recognizing that not all factors and data considered in each analysis will be relevant to all agency decisions. The timeline, statutory authority, and discretionary scope of some decision making processes may allow more components of some equity analyses to be incorporated into some decisions than others.

Agencies should have discretion to apply equity analyses in appropriate types of decisions, which could include rulemaking, enforcement, permitting, decisions to authorize new or expanded transit or energy infrastructure projects, and adjudicatory proceedings before the PUC such as utility rate cases, Phase II electric utility resource planning, and certificate of public convenience and necessity cases. There are many different types of permits for certain facilities, and in some cases, agencies may determine that it makes sense to apply an equity analysis to some types of permitting actions rather than others. Agencies could also potentially apply equity analyses to funding decisions (i.e., grantmaking or project funding), potentially by ensuring that a certain percentage of grant funds are allocated to projects in disproportionately impacted communities or otherwise prioritized based on the results of an equity analysis. One example could be prioritizing investments in electric vehicle infrastructure in communities that an equity analysis shows has a disproportionate burden of vehicle-related air quality issues such as PM2.5 emissions. When applying equity analyses to permitting decisions for new facilities, agencies should consider opportunities for interagency collaboration. When applying equity analyses in permitting decisions for new facilities, agencies should consider the option of denying the permit where necessary to protect public health in the impacted community. Agencies should consider how to incorporate equity analyses as early as possible in their decision making processes.

Although the cumulative impacts component of equity analyses will consider impacts to various media and socioeconomic factors, not all agencies have jurisdiction, oversight, or authority to address many of these impacts. Agencies should have flexibility to implement the components of each equity analysis that are within their statutory authority.

Decisions based on the cost-benefit analysis component of equity analyses should not be made solely based on economic costs, and should prioritize protecting health where doing so is consistent with agency legal authority. In many instances, factors other than a cost-benefit analysis may be relevant, such as system reliability, public safety, or economic development.

C. Local Governments

Because some decisions to implement equity analyses may involve land use or other areas of local government authority, the role of local governments should be considered.

D. Community Engagement

In addition to engaging communities in developing equity analyses, state agencies and regulated entities should also engage with impacted communities in decision making processes to implement an equity analysis.

III. Components of the Equity Analyses

The centralized equity analyses should contain data, analysis, and information on various topics to inform agency decisions that may impact the area that is the subject of the analysis. Four key components the Task Force has identified include a cumulative impacts analysis, cost-benefit analysis, health impacts assessment, and identifying solutions.

The Task Force recognizes that more detail is needed about how the components of equity analyses should fit within agencies' decisions to implement the analyses. The Task Force would welcome public comment about the following questions to guide its future discussions:

i. How do the components of equity analyses fit within the way that an agency would ultimately apply each analysis?
ii. How should an agency that does not have regulatory authority to address some (or most) components of an analysis incorporate the analysis into its decisions?
iii. For a centralized equity analysis, the geographic scope of the impacts of an agency decision may be different (larger or smaller) than the scope of the centralized equity analysis conducted for a specific area. How should agencies account for this?
iv. How do the components of equity analyses interact with other equity assessment tools like Colorado EnviroScreen?
v. Do some components of the equity analysis make sense only for a centralized analysis or an action-specific analysis?

A. Cumulative Impacts

Cumulative impacts will be an essential topic for equity analyses to consider. The cumulative impacts considered in the equity analyses should be cross-media (air, water, soil, radiation), including the cumulative impacts from multiple types and sources of air pollutants. The cumulative impacts component of the analyses should include factors that intersect with environmental health, such as economic and socioeconomic burdens and benefits, as well as qualitative and trauma-sensitive data on stress, mental health, and systemic barriers to equity. The cumulative impacts component of the analyses should also include a baseline assessment to help agencies determine the "net difference" of activities they permit. Understanding how to avoid adverse impacts requires a clear understanding of baseline data. Finally, the cumulative impact component of the analyses should consider both short-term and long-term health impacts due to both chronic, long-term pollutant exposures and short-term exposures to higher levels of pollutants.

Recognizing that not all agencies have regulatory jurisdiction to address all sources of adverse environmental or socioeconomic impacts, any cumulative impact requirements should provide flexibility for an agency to include relevant sensitive receptors as part of the cumulative impacts analysis. To guide this consideration, where appropriate, the cumulative impacts analysis should identify solutions to address adverse impacts that are identified.

The Task Force would welcome public comment about how agencies should address other potential barriers to considering cumulative impacts in addition to jurisdictional limits. For example, a lack of funding could be a barrier. Similarly, a lack of scientific information about health issues related to environmental exposures may also create barriers for agencies considering cumulative impacts.

To better understand cumulative impacts, equity analyses should specifically consider data and information about existing impacts to a variety of environmental media and socioeconomic factors. Topics that could be considered include: air quality; water quality; soil contamination; waste management; water supply; ecosystem services and ecological impacts; land use; industrial activities (including power generation and electric resource mix, oil and gas development, mining, logging, agriculture, and other manufacturing and industrial processes); energy affordability; affordability and accessibility of transportation; affordability and accessibility of housing; access to healthcare; affordability and accessibility to healthy food; impacts to mental health; just transition opportunities; natural disaster risk exacerbated by climate change; and fiscal impacts to local governments.

The entity that develops the equity analyses should draw on existing examples of cumulative impact analysis frameworks from other states or jurisdictions, such as the U.S. EPA's Cumulative Impacts: Recommendations for ORD Research.

B. Cost-Benefit Analysis

The Task Force recognizes that without a specific action to consider, it is difficult to understand what costs and benefits would be assessed in a centralized equity analysis.

Accordingly, the Task Force would welcome public comment about whether a cost-benefit analysis should be included in a centralized equity analysis.

If a cost-benefit analysis is included as part of equity analyses, the Task Force recommends that each equity analysis should consider both benefits and burdens to disproportionately impacted communities. The cost-benefit analysis should be comprehensive and include costs associated with health and environmental impacts, potential unintended consequences, and tradeoffs among costs and benefits. Additionally, the cost-benefit analysis should consider costs and benefits to specific groups, including: the public as a whole; disproportionately impacted communities; local governments; and the state government.

Conducting a cost-benefit analysis and quantifying economic impacts is complex. The Task Force identified several important considerations for the cost-benefit analysis, including quantifying the economic cost of health impacts to the impacted community, considering the adverse economic impacts of environmental impacts using tools such as the social cost of carbon; and ensuring that the cost-benefit analysis includes costs to community and municipal infrastructure. As part of the latter consideration, the cost-benefit analysis should specifically consider the impacts to local government ability to provide services and benefits, and fiscal impacts to local government.

The Task Force believes it is especially important to include a nuanced analysis of impacts to workers and jobs in a community as part of the cost-benefit analysis. Although the cost-benefit should consider workforce impacts, it should avoid using a binary narrative of "jobs vs. the environment," and instead recognize a more nuanced and data-driven framework. The analysis of impacts to workers should specifically include impacts to worker health and occupational health risks. It should also consider workforce development and job creation as benefits from industrial activities in a community. This analysis of workforce development should include metrics of human capital, including the number, quality, location, and proximity of jobs that can be created or maintained by a new or existing economic activity. Additionally, it should identify whether the jobs that are created are considered permanent or temporary.

Another important part of the cost-benefit analysis is analyzing any potential unintended consequences and tradeoffs. The cost-benefit analysis could use a scoring mechanism to address conflicts or competing priorities, if it identifies trade offs or conflicts between options that can impact different media. For example, one option might reduce air pollution but result in adverse environmental impacts to another media.

C. Health Impacts Assessment

Another important component of equity analyses is a health impacts assessment. A qualitative and/or quantitative health impacts assessment should identify whether and how environmental exposures contribute to health disparities for disproportionately impacted communities. It should be developed using existing monitoring data and modeling techniques to understand exposures, and interpret potential health impacts through an epidemiological or toxicological analysis.

D. Identifying Solutions

A final potential component of equity analyses is identifying relevant mitigation options. Agencies should be legally empowered to evaluate, score, or compare mitigation options proposed for future projects to ensure that they are effective.

IV. Setting Thresholds

The Task Force has had several conversations about the concept of incorporating thresholds into equity and cumulative impacts analyses. However, the Task Force is still in the process of identifying key details about how the thresholds would be set, who should set them, what pollutants the thresholds would be set for, and how the thresholds would relate to the equity and cumulative impacts analyses. The potential recommendations that the Task Force has discussed so far are that:

- The legislature should provide appropriate funding and resources and direct the appropriate expert agencies to consider setting maximum, quantified, and enforceable thresholds beyond which further pollution is not permissible without mitigation due to cumulative health impacts, considering past, present, and future cumulative impacts.
    - This exercise of setting thresholds would presumably be part of the equity analysis process.
- The legislature should require agencies to deny permits for new facilities that would cause pollution levels to exceed cumulative thresholds, and for which such pollution impacts could not be avoided.
    - This would be an actionable level that agencies would base decisions off of to ensure any additional pollution added by a new source or modifications to an existing source stay below the level identified in the cumulative impacts analysis.
    - This could inform facility siting decisions to ensure new facilities do not add burdens to already burdened communities.
    - The threshold concept could be analogous to the Clean Water Act's existing Total Maximum Daily Load (TMDL) requirement that limits the total pollution load for streams and rivers.

The Task Force recognizes that there are many important questions that need to be answered about the threshold concept, many of which were raised by public commenters in comments on Draft 1 of the recommendations. Accordingly, the Task Force would welcome public comment about the following questions:

- Should the Task Force recommend specific pollutants for consideration for a threshold, keeping in mind that setting a threshold for a single pollutant is very complex and can involve a multi-year process?
- Is the threshold concept intended to address the cumulative impact of multiple pollutants?
    - Specifically, how would air toxics and volatile organic compounds be addressed in setting thresholds? Should thresholds be set for individual compounds or groups of compounds?

- Should the Task Force address the burden associated with having a large, sustained presence of numerous sources of pollution within their specific geographic area?
- How should the analysis address the economic impacts of denying new economic activity in an area that may already face disproportionate economic burdens?
- In addition to denying permits that could cause pollution levels to exceed cumulative thresholds, should agencies also have the option of strengthening the permit terms to avoid adverse health impacts?
- Should the Task Force set lower thresholds?
- How do the thresholds interact with other tools for assessing equity, such as the equity & cumulative impacts analysis itself and Colorado EnviroScreen?
- What types of scientific studies and evidence would be used to set the thresholds?
- Where should measurements be taken in various media (air, water, soil) to determine whether additional levels of pollution would surpass a threshold?
- How would the thresholds relate to the National Ambient Air Quality Standards (NAAQS), and what lessons learned by EPA in developing the NAAQS could be applied to the state exercise in setting thresholds?
- How would community members and local governments be included in the process of developing thresholds?
- Are there pathways to accomplish the goal of this concept without setting a numeric threshold? For example, building on the example of COGCC having the option to deny Oil and Gas Development Plan applications based on impacts to public health, safety, welfare, the environment, and wildlife resources? What does the process of setting thresholds provide beyond a process that tells agencies to consider cumulative impacts and say no to certain actions if impacts are too great?

Section 3: Data and Reducing Environmental Health Disparities

Based on straw polls at the August 25 meeting, the Task Force has reached preliminary consensus on many topics discussed by the Data and Health Disparities Subcommittee. At its next meeting, the Subcommittee will focus on language in the Environmental Justice Act instructing the Task Force to develop "recommendations for establishing measurable goals for reducing environmental health disparities for disproportionately impacted communities." C.R.S. § 25-1-133(3)(a)(VI). The Task Force would welcome public comments about this topic.

A. Participatory Science [Preliminary Consensus]

CDPHE or the Environmental Justice Coordinating Entity should be provided with funding to increase the capacity of participatory science projects. Participatory science is also referred to as "citizen science," "community science," or "community-based participatory research". Participatory science can help bridge the gap between the science upon which health standards are set and community lived experience. It is important for funding to be sufficient for a community group or educational organization to implement a viable participatory science project that includes community engagement, assessment and evaluation, and overall coordination and compliance with grant terms.

Given the wide range of environmental and public health topics that could be the subject of participatory science research, and the range of agencies that can use data from participatory science, there should be a centralized standard that all agencies will accept for the rigor and processes of gathering data through participatory science projects in each discipline that all agencies will accept. Additionally, there should be a single standard for research into topics for each media and discipline (i.e., a single centralized process set up for research standards for participatory science projects on air quality, that would be accepted by both CDOT & APCD).

CDPHE and the Environmental Justice Coordinating Entity should distribute participatory science funding that may be provided in the future to both community organizations and educational institutions like schools partnering with community organizations, community colleges serving DI communities, universities serving people of color, and tribal colleges. This funding would be used by the community organization or school to set expectations, conduct technical training, review data, act on data, summarize & share data more broadly with the public, and communicate with community members who shared data.

If the Environmental Justice Coordinating Entity is created, it should:

- Develop guidance documents detailing what participatory science entails.
- Develop a formalized Institutional Review Board (IRB) process, modeled off of the Navajos Nation's IRB, that guarantees community involvement in all phases of participatory research
- Provide a menu of options for community groups conducting participatory science projects to partner with specific recognized institutions. This will help maintain neutrality and minimize potential conflicts of interest between organizations that are conducting research and potential beneficiaries of the research.

- Create a central database where all research projects are stored to avoid research fatigue.

When the state government makes investments in participatory science projects, it should consider using the Justice40 model. Under the Justice40 model, federal agencies commit to at least 40% percent of the overall benefits of certain federal investments flowing to disadvantaged communities. Similarly, state investments in participatory science projects should prioritize DI communities, potentially with 40% or more of investments in participatory science projects flowing to DI Communities.

When the Environmental Justice Coordinating Entity, CDPHE, or any other agency uses funding to support participatory science initiatives, it should prioritize supporting community driven research. Communities should identify research questions based on their own priorities. Where possible, the use of existing participatory science programs should be maximized by communicating across state agencies to track where research is already being conducted to avoid community research fatigue.

It is also critical that agencies and the community group or school conducting the participatory research project work together to set clear and shared expectations, and develop standardized processes for how data will be shared and used by both community and state agencies at the outset. Before the data collection starts, the community organization or school conducting the participatory research should make sure the state agency can use the data in the way that the community desires/intends. Additionally, CDPHE or the Environmental Justice Coordinating Entity should develop guidelines for community-driven research to ensure the meaningful inclusion of community members. For example, CDPHE should develop guidelines to ensure that research questions are developed with input from community representatives and allow for participants to provide narratives to inform research questions (with IRB approval).

Developing these expectations will help ensure that data is collected through a rigorous process and is of equivalent quality to data collected by agencies using standardized and/or well-supported collection methods. Community organizations or schools conducting participatory research should use standardized formatting (i.e., AQCSV) to ensure data can be compared to other sources of data. CDPHE and the community organization or school conducting the participatory science project should develop agreements to share data with both regulatory agencies and communities.

B. Colorado EnviroScreen [Preliminary Consensus]

The Task Force has developed several specific recommendations about the use and improvement of Colorado EnviroScreen.

First, CDPHE's Environmental Justice Advisory Board should use Colorado EnviroScreen as an initial screening tool to inform decision making and help prioritize where to allocate environmental justice grant funding. Other state agencies should also consider the use of EnviroScreen to inform other types of funding decisions if and where appropriate.

Grantmaking entities, or the Environmental Justice Coordinating Entity, should develop a rubric for grantmaking using Colorado EnviroScreen that ensures rural communities are not left out.

Second, the Task Force supports CDPHE's efforts to make Colorado EnviroScreen completely transparent, and agencies should continue to engage communities around the methodology and indicators in Colorado EnviroScreen when using the tool for decision making. Specifically, CDPHE should provide trainings and workshops for community members to learn how to use Colorado EnviroScreen.

Third, agencies should continue to collaborate on mapping efforts, like EnviroScreen, to centralize and consolidate data across agencies for informed decision making. For example, other agencies such as the PUC could consider incorporating Colorado EnviroScreen by reference into regulations to avoid duplication and save agency resources. As CDPHE receives feedback from agencies regarding adjustments that would aid in the tool being used effectively by other agencies, CDPHE should consider how to make adjustments and changes to the tool to support this effective use. For example, CDPHE could add a layer showing regulated utility service territories as that is not currently represented in the tool.

Finally, the legislature should provide funding for annual updates of Colorado EnviroScreen to ensure it stays up to date as new census data becomes available. If Colorado EnviroScreen is updated annually or at another periodicity, CDPHE should ensure that historic versions of the data or the tool itself are appropriately maintained and publicly accessible if they are incorporated by reference into specific agency regulations.

C. Complaint Data [Preliminary Consensus]

CDPHE should continue collecting data on the complaints it receives and continue to improve transparency around complaint resolution processes, while continuing to ensure that complainants have anonymity to avoid disincentivizing the public reporting concerns.

i. Communicating with Complainants

Where resources and funding is available, CDPHE should use tools like customer relationship management (CRM) software or other processes to ensure that the agency's process of investigating a complaint is transparent to the complainant. At the conclusion of the complaint investigation process, CDPHE should communicate to the complainant about the agency's response, any data-based reasons for that response, and the outcome of the complaint investigation.

ii. Communicating with the General Public

When communicating with the general public about complaints, CDPHE should provide information in an easy-to-find location on its website. Specifically, the Environmental Justice Ombudsperson's public complaint system should be transparent. Community members should have access to a log of when complaints were made, what they were about, and the response that

followed. CDPHE should also translate the information into relevant languages for the community.

It is critical that public communications about complaints avoid compromising the anonymity of the complainant through revealing any personal details. Making complaint details public can lead to retaliation (particularly in smaller rural communities), which would deter future complaints regarding legitimate concerns.

Additionally, CDPHE should prioritize protecting the due process and privacy rights of regulated entities that may be the subject of an ongoing complaint investigation, and adhere to any applicable confidentiality requirements in state and federal law that may limit the ability to release information about enforcement or compliance actions that have not been completed.

To avoid compromising anonymity or violating due process rights by communicating about current complaints, CDPHE should communicate with the broader public about what the agency's response is to any recurring complaints, so that members of the public can understand any potential trends, without compromising the anonymity of individual complaints. CDPHE should also improve the transparency and availability of information about completed enforcement actions.

D. Data Sharing [Preliminary Consensus]

a. Where possible, data should be collected using a universal format (e.g. AQCSV) so that data from different sources can be easily aggregated.
b. The legislature should fund increased interagency data collaboration to continue improving how data is linked across state agencies to further understand cumulative impacts. If the Environmental Justice Coordinating Entity is created, the funding for interagency data collaboration should be directed to that entity to ensure that all state agencies with relevant data are connected and contributing to and using the shared data.
    i. The Legislature should specifically provide funding for a data lake where all data collected using public funds (including data gathered by both state agencies and outside groups through participatory science projects funded by state agencies), and through the equity analysis can be stored and accessed by the public and agencies.
    ii. The funding should specifically cover the costs of CDPHE, CDOT, the PUC, and COGCC to contribute to and access data from the equity analyses discussed above.
c. Where possible, the interagency data should also be shared with local governments and local public health agencies.

E. Addressing Data Quality [Preliminary Consensus]

Vetting and cleaning data often leads to a delay in its utility, yet environmental justice concerns in many communities must be dealt with urgently.

a. Data quality indicators, e.g., accuracy, completeness, consistency, validity, and reliability should be considered in decision making.
b. However, data that is older or may have other limitations should still be considered, as data trends may remain stable despite other limitations in datasets.
c. Using a tiered approach, data that has not been quality assured or quality checked can be used for screening.
    i. Such 'screening data' can help begin directing agency resources and can trigger further review or more robust monitoring.
    ii. Data considered 'screening data' should be clearly communicated as such-data that does not concretely measure exposure or risk.
d. Structures and solutions to fill data gaps should not unduly inhibit state agency ability to reduce pollution based on uncertainties regarding the impacts of that pollution.
    i. When data gaps exist, state agencies should partner with regulated entities and/or community groups to conduct research to fill the gaps
    ii. In the interest of equity, state agencies can also conduct their own research to fill data gaps. However, state agencies should also incorporate community data and information to provide additional context and background for agency decisions where appropriate.
    iii. Agencies should develop guidance, or rely on EPA guidance, about the appropriate use of data that is subject to uncertainties.
e. Agencies should understand that participatory or community-based research or science is equally valuable to decision making as research conducted by academic institutions or agencies. Agencies should also recognize that participatory science may yield data of equal or greater quality as research conducted by academic institutions, particularly when the participatory science is overseen or certified through an agency process.

F. Data Collection & Modernization [Preliminary Consensus]

The legislature should increase funding for data collection and modernization.

a. Further funding to support the Air Pollution Control Division's data transformation efforts should be provided.
b. Funding should expand to other CDPHE divisions including but not limited to the Water Quality Control Division and Hazardous Materials and Waste Management Division.
c. Funding should expand support for CDOT's Policy Directive 1610 - Greenhouse Gas Mitigation Measure

G. Fund Just Transition: The legislature should fully fund the Colorado's Just Transition Action Fund and expand the scope to cover other industries

Section 4: Definition of Disproportionately Impacted Community

A. Terminology

During the August 25 meeting, the Task Force discussed whether "disproportionately impacted' is the best term to define communities that experience environmental justice concerns. The Task Force believes that the term "disproportionately impacted" is a form of deficit framing that defines communities by their deficiencies rather than their strengths. At this next Definition of Disproportionately Impacted Community Subcommittee meeting, the Task Force intends to discuss alternative terms that rely on assets framing and highlight a community's strengths. The Task Force would welcome public comment about this topic.

B. Wording Changes

The Task Force has extensively consulted with experts about the current definition of disproportionately impacted community. Based on this consultation, the Task Force recommends that the Legislature make the following changes to revise the wording of the definition of disproportionately impacted community in C.R.S. § 24-4-109(2)(b)(II). These revisions are intended to improve clarity and address drafting errors, rather than changing the substance of the definition. Suggested revisions are indicated with the red and strikethrough text below:

"Disproportionately Impacted Community" means a community that is in a census block group that meets the criteria in section a or b below, as determined in accordance with the most recent 5-year United States American Community Survey ~~most recent United states census, where~~:

a. That meets one or more of the following demographic criteria:

1. the proportion of the population that lives in households that are below 200% of the federal poverty level ~~households that are low income~~ is greater than forty percent,
2. the proportion of the population ~~households~~ that identify as people of color ~~minority~~ is greater than forty percent, or
3. the proportion of households that spend more than thirty percent of household income on housing ~~are housing cost-burdened~~ is greater than forty percent; or

b. ~~Is a~~Any other community as identified or approved by a state agency, if:

1. T~~t~~he community has a history of environmental racism perpetuated through redlining, anti-indigenous, anti-immigrant, anti-hispanic, or anti-black laws; or
2. T~~t~~he community is one where multiple factors, including socioeconomic stressors, vulnerable populations, disproportionate environmental burdens, vulnerability to environmental degradation and/or climate change, and lack of public participation, may act cumulatively to affect health and the environment and contribute to persistent disparities. ~~As used in this subsection (2)(b)(II),~~

~~"Cost-Burdened" means a household that spends more than thirty percent of its income on housing, and "Low Income" means the median household income is less than or equal to two hundred percent of the federal poverty guideline.~~

C. Standardized Definition [Preliminary Consensus]

The Task Force recommends that there should be a single standardized definition of disproportionately impacted community for all state agencies. This definition should include a range of factors relevant to health and economic impacts, including but not limited to the current statutory criteria, linguistic isolation, and income-qualified utility customers.

The definition should also include quantified thresholds, where possible, to provide both communities and regulated entities with certainty about which areas meet the definition. For example, agencies can use Colorado EnviroScreen to identify communities that meet the cumulative impacts prong of the definition. But individual agencies would have discretion to determine, through a rulemaking, what percentile threshold of Colorado EnviroScreen Score to use in the context of specific types of agency decisions.

However, the way that the definition is applied should vary depending on the context of the agency decision. Individual agencies should be able to prioritize where they focus resources, or apply the definition to a certain subset of areas that meet the definition. Agencies should determine how their agency would apply the definition through a public rulemaking process in which the agency identifies how it will define disproportionately impacted communities in specific contexts within the scope of the agency's work. This will help ensure that the agency will effectively target communities that are impacted by specific types of agency action, while consistently applying the same definition with uniform criteria across agencies.

Under this approach, the statutory definition would be amended to instruct agencies to conduct rulemakings to identify disproportionately impacted communities, and to establish procedures for how each agency will apply the definition of disproportionately impacted community in the context of specific decisions, such as community engagement, grantmaking, rulemaking, and permitting.

The Task Force has not yet reached consensus on whether the single standardized definition should be identical for all state agencies, or whether it should include a menu of different factors that different agencies can draw from when establishing their own individual definitions. During the August 25 Task Force meeting, the Task Force conducted a straw poll in which 8 Task Force members voted for Option 1, 5 Task Force members voted for Option 2, and 2 Task Force members abstained. Accordingly, the Task Force would welcome public comment on this topic.

- Option 1: There should be a single definition of DI Community that includes all of the same factors for all state agencies
- Option 2: There should be a menu of different factors that different agencies consider when they develop their own definition of DI Community

D. Scale

The Task Force believes that census block groups are an appropriate scale to use in the definition because they are the most granular level of data available, and provide adequately reliable data about race, income, and housing cost burden. Accordingly, the legislature should not change this component of the definition.

E. History of Environmental Racism Prong of the Definition:

The Task Force recommends that this prong remain in the definition. However, agencies should have discretion in implementing the definition of disproportionately impacted community to verify that present day circumstances continue to warrant considering the area as a disproportionately impacted community on a case by case basis. Agencies should ensure that changes such as gentrification do not result in a community that was historically subject to exclusionary policies (i.e., redlining) receiving benefits if present day circumstances no longer warrant considering the community as disproportionately impacted.

F. Housing Cost Burden

The Task Force has had extensive discussions about whether the housing cost burden prong should remain in the definition of disproportionately impacted community. The same question has also been extensively discussed by the Definition of Disproportionately Impacted Community Subcommittee. The Subcommittee concluded that the housing cost burden prong should remain in the definition, but that individual agencies should have discretion to implement the definition differently in the context of different types of decisions, as discussed in Section C, above. The full Task Force took a straw poll on this question during the August 25 meeting. In the straw poll, 8 Task Force members voted in favor of leaving housing cost-burden in the definition, 2 voted to remove it from the definition, and 5 Task Force members abstained. Because the Task Force has not yet reached consensus on this topic, it would welcome public comment about the following options:

- Option 1: Housing cost burden should remain part of the definition
- Option 2: Housing cost burden should be removed from the definition.

Section 5: Best Practices for Community Engagement

The Task Force welcomes public comment about sections A, B, and C below, regarding which agencies the best practices for community engagement should apply to, when the best practices should apply, and which types of agency decisions they should apply to.

A. Which Agencies Should Apply the Best Practices?

Currently, the Environmental Justice Act defines "agency" as the Air Quality Control Commission and Water Quality Control Commission. As a result, these agencies are required to adhere to the specific best practices for community engagement enumerated in the statute.

However, the Task Force recommends that disproportionately impacted communities should be engaged as early as possible in the decision making process. One option would be to change the term "Commission" to "Division" in the statute so that engagement can occur earlier. For example, in the context of a rulemaking, the Air and Water Divisions typically work through stakeholder processes to develop proposed regulations before those regulations are considered by the Air and Water Commissions. The Task Force would welcome public comment about when exactly engagement should begin relative to a rulemaking process.

However, changing the term "Commission" to "Division" in the statute should only occur in conjunction with other changes, discussed below, to what types of decisions would require applying best practices, and requirements about what types of engagement practices are mandatory. This is necessary to ensure that requiring earlier engagement does not overly burden agency resources, prevents meeting fatigue, and ensures that engagement is meaningful for disproportionately impacted communities. Nevertheless, agencies should engage disproportionately impacted communities throughout the decision making process, so engagement should continue to occur in some form before the Commissions as well.

The Task Force is also exploring whether the best practices for community engagement should apply to other agencies, and would welcome public comment on this topic.

B. When Should Best Practices Apply?

Agencies should have discretion to apply the best practices for community engagement discussed below on a case by case basis depending on the unique needs of a community and the nature of the agency action that the engagement is about. However, there should also be some baseline standards that are mandatory, which agencies must follow to limit that discretion to ensure that disproportionately impacted communities are not overlooked or left out of decision making that impacts their communities. To ensure accountability, if an agency determines that it is unnecessary or not possible to follow the baseline standards, the agency should document that decision and explain their reasoning in writing, in a public document.

Agencies should have flexibility to develop individual plans identifying the baseline practices they will implement for specific types of agency actions, recognizing that effectively

applying the best practices for community engagement requires significant resources. The baseline should include provisions for communication, transparency, and accountability.

Many agencies have already developed plans or regulatory requirements to enshrine these frameworks, and therefore may need to make fewer changes to implement the best practices. Other agencies do not have substantial staff resources for community engagement, and may not be able to implement some or all best practices. For agencies that do not yet have resources to implement best practices, the Task Force recommends a phased-in implementation timeline of two years after the effective date of legislation enacting this recommendation. For agencies that already have resources to implement the best practices, the Task Force believes a shorter timeline would be appropriate. The Task Force recommends that agencies periodically review their plans for applying the best practices after the initial plan is updated and implemented.

The list of best practices for community engagement below can be a resource for agencies to draw on, even if those agencies do not have staff resources to implement all practices or do not have mandatory engagement requirements. The Environmental Justice Advisory Board can also provide advice about best practices for community engagement to CDPHE. If an Environmental Justice Coordinating Entity is created, it could also provide:

- Centralized interpretation and translation services;
- Information sharing related to procurement practices for inclusive meetings, like centralized vendor lists for licensed childcare services and facilitation contractors; and
- Partnerships between agencies who are conducting engagement in specific areas of the state so multiple agencies can take public comments on multiple topics at the same event.

C. What Types of Decisions Should Best Practices Be Applied In?

The current prescriptive statutory definition of proposed state action that covers rulemaking, licensing, and adjudicatory hearings should be replaced with a more flexible performance based standard that requires covered agencies to apply best practices for community engagement for decisions that could significantly impact the environment or public health in a disproportionately impacted community. This performance-based standard would presumptively cover important rulemakings that have the potential to substantially change pollution levels in disproportionately impacted communities, and permitting actions for the largest polluting facilities. However, agencies would have discretion or flexibility not to apply the standards in less significant rulemakings such as procedural cleanup rulemakings, and for permitting actions for relatively small or uncontroversial facilities.

The Task Force would specifically welcome public comment on this topic so that it can develop more specificity and detail around what types of agency actions would "significantly impact the environment or public health in a disproportionately impacted community."

D. Cross-Cutting Recommendations About Community Engagement

1. Capacity Building to Conduct Meaningful Community Engagement [Preliminary Consensus]

Agencies should build funds into their budgets for outreach, engagement, and education. Agencies should also be provided with additional resources to hire dedicated personnel to address capacity concerns, which should include funding for a range of appropriate outreach methods depending on the nature and importance of the agency action or project to a disproportionately impacted community. This reflects the intention to build community partnerships and harness support to create meaningful change. To effectively leverage resources, agencies should coordinate and communicate with each other about outreach events to ensure community time is used wisely, and agencies should partner on events where possible.

Agencies should establish on-going relationships with community connectors. Community connectors should be compensated for their important contribution in strengthening community engagement and tailoring engagement to reflect community needs and interests.

State agencies should also leverage trusted relationships with local public health agencies to help add capacity for and remove barriers to community engagement.

2. Making Technical Decision Making Processes Accessible [Preliminary Consensus]

CDPHE or the Environmental Justice Coordinating Entity should build on the existing list of pro bono air quality attorneys and produce a list of other subject matter experts that might be willing to provide pro bono technical, legal, and regulatory information to disproportionately impacted communities. The experts could provide information about a range of environmental justice issues to communities. CDPHE should also conduct workshops on how to effectively engage and advocate in decision making processes so that community members can learn how to participate in a way that their input can effectively be used by decision makers.

3. Implementing Best Practices for Community Engagement [Preliminary Consensus]

To facilitate implementation by that agency's staff, each agency should develop centralized guidance and ongoing trainings on how to implement the best practices for community engagement (e.g., list of community centers to host meetings and community connectors and organizations that are working in the area). CDPHE's Environmental Justice Program or the Environmental Justice Coordinating Entity could develop a model guidance for other agencies to use.

4. Role of Regulated Entities [Preliminary Consensus]

In some circumstances, regulated entities should play a role in conducting community engagement, particularly around proposals for new projects that must be considered by a regulatory agency. For example, many of COGCC's regulations for community engagement around new permit applications apply to operators rather than the agency itself.

5. Participation Incentives

Consistent with CDPHE's existing pilot efforts, agencies should make participation incentives available to compensate community members for their time providing feedback and input, as funding allows. Agencies should create appropriate criteria to limit access to participation incentives to qualifying individuals who live in Colorado and are not compensated by their employer to participate in a meeting.

Participation incentives may include compensation in the form of cash/direct gift cards, as well as other types of incentives such as ride share service vouchers, bus passes, childcare, and meals/refreshments at meetings. A recommended range for monetary compensation is $20 to $30 per hour, to be reevaluated if needed based on inflation. Community connectors may also recommend additional innovative types of incentives for the community. One example of an innovative incentive is making free rapid-COVID testing and masks, or other relevant supplies to protect public health, available for people who attend in person, as appropriate. Additionally, where available, agencies should provide communities with grants to support participation, such as EPA's technical assistance grants for Superfund Community Advisory Groups.

If the Environmental Justice Coordinating Entity is created, it could consider providing a centralized fund for compensation to which individuals or organizations could apply, and develop processes that are legally vetted that other agencies could use to provide compensation.

In a straw poll at the August 25 meeting, 11 Task Force members voted in favor of the participation incentives concept, 6 voted against it, and 1 abstained. Although this represented a majority of Task Force members present, it was less than two-thirds of Task Force members present. As a result, this will be an important topic for further conversation at future Best Practices for Community Engagement Subcommittee meetings. The Task Force would welcome comments from members of the public on this topic.

6. Indigenous Community Engagement

- All state agencies should have paid, full-time Tribal liaison(s) on their staff to facilitate formal government-to-government relationships with Tribal nations as well as provide guidance on engagement with other Indigenous populations.
- State agency Tribal liaisons should work to create avenues for Tribal governments and Indigenous Coloradans to formally raise concerns about potentially harmful names of industrial facilities.
    - Additionally, agencies should continue implementing practices such as the Public Utility Commission's practice of referring to power plants by non-Indigenous names in short form (for example, replacing the name of a unit at a power plant that is named after a Tribe by instead referring to the city or county where the power plant is located).
- Agencies should continue to acknowledge the Tribal nations that historically inhabited Colorado at appropriate times, like the beginning of public meetings.
    - When doing so, agencies should consider going beyond land acknowledgements by using tools like the Native Governance Center's Beyond Land Acknowledgment Guide.

- Agencies should improve engagement with Indigenous populations by establishing positive allyship through active collaboration and listening to the concerns and goals of Indigenous communities.
    - Agencies should understand the intent for engaging by utilizing cultural humility.
    - Agency staff should educate themselves about the historical context for the current relationship between federal and state governments and Tribal governments before taking action.
- Agencies should use innovative strategies for engaging with urban Indigenous populations:
    - Effectively use and share data that has already been collected by American Indian/Alaska Native organizations on Indigenous populations. The use and sharing of data should be guided by community perspectives and priorities.
    - Follow specific guidelines from the Urban Indian Health Institute when collecting data on urban American Indian/Alaska Native populations. When Tribal governments provide specific guidelines and principles for working with Tribal members (i.e., the Navajo Nation Human Research Review Board), these Tribal-specific guidelines should be followed.
    - Agencies should privilege Indigenous knowledges, lived experiences, and ways of knowing and doing (i.e., talking circles).
    - Agencies should continuously and actively reach out to Urban Indigenous Centers.
        - A first step would be to formally ask for an introduction meeting and then attend a public forum or open listening session to learn more about the Indigenous community.
        - This provides insight into the urban Indigenous community and it would provide knowledge about their concerns and goals.
    - Ask permission to respectfully attend and conduct outreach at Indigenous events from organizers and urban Indigenous centers.
        - For example, it may not be appropriate to perform outreach at particular powwow events, and would be important to match themes with powwow events.
        - If an event is organized by a Tribal government, it would be important to take the necessary steps to affirm the nation to nation relationship with the tribal government. For example, agency staff should not cold email a Tribal chairperson or the Director of a tribal government program, but instead should work through appropriate channels such the agency's Tribal liaison.
- In future legislation, the Legislature should consider distinguishing between outreach and engagement requirements for federally recognized Tribes and Indigenous populations more broadly. Federally recognized Tribes have sovereignty rights and there are specific protocols that should be followed to ensure the appropriate government-to-government relationship with Tribal governments.
- All arms of Colorado state government should continue respecting the sovereign rights of the Ute Mountain Ute and Southern Ute Indian Tribal governments when working in equal partnership with the Tribal governments.

E. Specific Recommendations About Best Practices for Community Engagement Currently Listed in the Environmental Justice Act [Preliminary Consensus]

In addition to the cross-cutting recommendations discussed above, the Task Force has developed specific recommendations for changing or improving several of the best practices for community engagement that are already listed in the Environmental Justice Act. C.R.S. § 24-4-109(3)(b). As discussed above, the Task Force does not envision that agencies would apply every one of these best practices in every circumstance.

1. ***Timing of Meetings:***
    a. The Task Force recommends changing the current requirement for three meetings to a more flexible requirement that requires a different number of meetings depending on the nature of the agency action that the meetings are about.
        i. The more important and far reaching the subject of the agency action, the more meetings would be warranted.
        ii. The specific timing of meetings (i.e., time of day and day of the week) for the meetings should reflect data about past turnout, and local community preference and availability that is informed by engaging community connectors, community feedback, agency experience, and considering meeting fatigue.
    b. Timing of meetings: State agencies should avoid scheduling meetings at the same time as regular meetings of local government bodies in the area.
2. ***Notice***: Notice should include location, time, duration and available incentives (including interpretation services, participant compensation, childcare, and food offered)
3. ***Outreach Methods***
    a. Depending on the nature and importance of the agency action, agencies should consider using the following types of outreach methods not currently listed in the statute to target outreach to specific communities. Which methods are used should be determined on a case-by-case basis considering the impact the agency action could have on a disproportionately impacted community, available funding, and data and other information about which channels are most effective to reach specific communities.
        i. Radio and/or t.v. advertisements
        ii. Text messages
        iii. Organic and/or paid posts on the most locally-used social media applications
        iv. Phonebanking
        v. Locally-relevant channels for news and community announcements
    b. The legislature should also provide funding for agencies to train or guide community connectors to broadcast meetings announcements and encourage engagement through other methods, such as:
        i. Phone banking
        ii. Handouts and fliers
        iii. Posting on local bulletin boards
        iv. Local organization gatherings/meetings

4. ***Methods for Receiving Input from Communities***
    a. In an effort to receive input and plan community engagement in a manner that reflects community input and concerns, agencies should work with compensated community connectors to consider locally-appropriate ways to:
        i. Invite community input early on in the process, including in the initial planning stages
        ii. Invite community input on the meeting format, notices, demographic questions and agenda
        iii. Partner with community members on meeting facilitation and leadership
        iv. Invite community input on upcoming meetings at regularly occurring events like parent-teacher meetings, neighborhood meetings, and "cafecitos" (monthly coffee meetings)
        v. Receive community input via diverse and accessible manners
        vi. Provide follow-up with communities within 4-6 weeks after community engagement
    b. Recognizing that communities have wide-ranging digital literacy skills and technology access, the Task Force supports the methods for receiving input that are currently included in the Environmental Justice Act, which include:
        i. In-person meetings
        ii. Virtual and online meetings
        iii. Online comment portals
        iv. Emails
        v. Call in meetings
    c. The Task Force would recommend adding the following methods of input:
        i. Hybrid meetings
        ii. Video comments
    d. Agencies should consider using the following methods to receive public input outside of public comment periods:
        i. Open office hours
        ii. Periodic listening sessions in different communities across the state that are broad in nature and not necessarily tied to specific agency actions.
        iii. Phone hotline
        iv. One-on-one meetings
        v. A public cloud-based folder for feedback and designated staff to compile information and turn it into a presentation
        vi. Mail surveys or other fillable documents to people with return postage included to ensure no cost to the person is incurred.
        vii. Focus groups
5. ***Locations of Meetings***
    a. The Task Force supports the list of meeting locations that are currently included in the Environmental Justice Act for community town halls and other public meetings to encourage agencies to host meetings in impacted communities, i.e., urban centers, predominantly BIPOC communities, below-average income communities, and rural locations

i. If agencies are holding multiple meetings about the same topic, the agency should choose a diversity of locations (different locations for each meeting)

b. Agencies should consider the following when selecting in-person meeting locations:
   i. Close/convenient for the target community to access
   ii. Free parking
   iii. Choosing a safe location
   iv. Access to public transportation
   v. Near bike paths
   vi. Choose locations where local businesses can economically benefit from the meeting
   vii. Availability of space for child care
   viii. Accessibility for people with disabilities (ADA accessibility)
   ix. Technology barriers and internet access issues that may make digital participation more difficult for people living in rural areas

c. If recommended by a community connector, create a meeting hub (e.g., in a community center or library) where community members can gather to join an ongoing online meeting. This can help in areas where reliable internet is lacking.

6. ***Outreach Materials***
   a. When creating outreach materials, agencies should consult with community connectors to:
      i. Where appropriate, consider creating an outreach plan that promotes effective connections with the community
      ii. Use accessible language that is easily readable and understandable by the community
      iii. Make materials highly visible on platforms most relevant and used by the local community, including by creating physical flyers or posters to distribute at local businesses and community centers
      iv. Make materials (including meeting notice) available in the top 3 spoken languages in an area, as funding is available
      v. Share meeting materials across diverse platforms as recommended in the community outreach methods above
      vi. Use graphic communication wherever possible to break down complex concepts, which helps address language barriers and makes content more easily shareable through social media and viewed on phones.
      vii. Develop easily digestible materials.
      viii. Develop material that is inclusive of the visually impaired.
   b. Recognizing that the timeline and scope of projects may adjust throughout a project's life cycle, outreach materials should be updated as changes to a project occur.

Section 6: Supplemental Environmental Projects (SEPs)

A. Solicit Early Community Input through the SEP Idea Library

CDPHE should make the SEP Idea Library readily accessible and easy to find. The SEP Idea Library should include criteria and categories of projects that relate to specific categories of violations to help keep a close connection between the nature of the violation and the project chosen.

Ideas that were not selected by community SEP selection committees should also be included in the Idea Library so they can potentially be funded by other SEPs in the future. The Environmental Justice Advisory Board should frequently review projects in the SEP Idea Library to inform the Board's choice of projects to fund through the Environmental Justice Grants Program.

CDPHE should conduct outreach, including public meetings about the existence of community-based SEP processes and the SEP Idea Library, to raise awareness about the Idea Library and get community feedback on ideas that should be included in the Library. The Environmental Justice Advisory Board should help facilitate or contribute to this outreach process. Regulated entities should also engage local health departments and community-based organizations to seek input on environmental and public health priorities for SEPs.

B. Ensuring SEPs Benefit Impacted Communities

When a violation occurs in a disproportionately impacted community, priority should be given to enforcement penalty revenue going back to the disproportionately impacted community where the violation occurred, either through a SEP or by funds going into the Community Impact Cash Fund (CICF) in the case of Air Pollution Control Division penalties, or both. SEPs should be prioritized for violations that occur in a disproportionately impacted community to ensure the revenue goes directly back to the community that was harmed by the violation.

Starting in Fiscal Year 25-26, the Air Pollution Control Division should prioritize SEPs on enforcement actions that go through a community selection process, or where a community requests a SEP through the process by submitting a project to the SEP Idea Library. Enforcement settlements for lower amounts of money should generally not go through a SEP process, and instead, the penalty revenue should presumptively be redirected to the Community Impact Cash Fund for distribution through the Environmental Justice Grants Program by the Environmental Justice Advisory Board. The Task Force recognizes that the length and complexity of the community selection process can lengthen the duration of the enforcement process and potentially delay a violating entity from coming back into compliance quickly. As a result, the Task Force recommends encouraging SEPs to go through a community selection process, but recognizes that this may not be advisable in all circumstances.

SEP Request for Applications (RFA) should be selected by prioritizing projects that will take place in or benefit disproportionately impacted communities (e.g., projects that affect water quality downstream in the affected community), including communities with higher Colorado

EnviroScreen scores. When a violation happens outside a disproportionately impacted community, there should be incentives to prioritize projects that also provide benefits to a nearby disproportionately impacted community through the supplemental environmental projects process.

The Environmental Justice Advisory Board should similarly prioritize funding projects through the Environmental Justice Grants Program that will redirect revenue to disproportionately impacted communities that were adversely impacted by the action that led to the enforcement penalty. In its annual grant report, the Environmental Justice Advisory Board should document a geographic comparison of where penalty revenue came from, compared to where grants are distributed, to provide accountability and transparency about the effectiveness of the Advisory Board redistributing penalty revenue in disproportionately impacted communities.

C. Procedural Requirements for Community SEP Selection Processes

CDPHE should revisit conflict of interest requirements for community-based SEP selection processes to avoid unintended barriers while maintaining safeguards to prevent misuse of funds. CDPHE should clearly explain conflict of interest requirements and other procedural aspects to community members participating in SEP selection committees at the outset of the process.

Similarly, CDPHE should revisit confidentiality requirements to ensure they are not unduly restrictive. CDPHE should ensure that community members fully understand the implications of their participation and what it means for their future participation with SEP-funded projects and interaction with SEP funding applicants during the SEP selection process. Where possible, CDPHE should ensure that community members participating in the selection process are a representative cross-section of the community.

D. Role of the Regulated Entity

At the August 25 meeting, the Task Force conducted a straw poll about the question below regarding the role of regulated entities in community-based SEP selection processes. The Task Force did not establish a clear preference among these options. Option 1 received 1 vote, Option 2 received 7 votes, Option 3 received 6 votes, and 4 Task Force members abstained. As a result, the Task Force would welcome public comment on this topic.

- Option 1: The SEP process should be amended so that if the entity that is the subject of the enforcement action participates in a selection committee with community members, it would have a non-voting role.
- Option 2: The entity that is the subject of the enforcement action should continue to be able to participate with a voting role on the selection committee in recognition that SEPs are voluntary actions by the regulated entity.
- Option 3: The community where the enforcement action is taking place should determine whether the entity that is the subject of the enforcement can participate on the selection committee and whether they will have a voting or non-voting role.

E. Simplifying Applications

CDPHE should simplify SEP applications to make them more accessible to small community groups with limited staff capacity and/or limited English proficiency. Additional SEP staff should be hired to provide administrative support to help community groups with grant writing, offering relevant types of training (i.e., budgeting and reporting) and other technical support. The Task Force recognizes that these additional resources are necessary for smaller community groups to be on an equal footing with larger organizations when applying for SEPs, especially through community-based SEP selection processes.