

Environmental Justice in New Hampshire

An Assessment of Issues and Needs

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Table of Contents

Introduction and Overview	1
Methodology	2
Community Context	3
Urban Communities	3
Rural Communities	3
New Hampshire's Growing Refugee Community	5
The Environmental Justice Landscape in New England and New Hampshire	6
New England	6
New Hampshire	6
Environmental Justice in NH: The Substantive Issues of Concern	7
I. Facilities Siting/Operations	8
II. Substandard Housing	9
A. Lead Poisoning	10
B. Pests/Bed Bugs	11
C. Asthma	12
D. Carbon Monoxide	12
III. Transportation	12
IV. Access to Food	13
V. Working Conditions	14
VI. Energy	14
VII. Climate Change	15
VIII. Public Engagement/Participation	15
Environmental-Justice Needs and Opportunities	16
Recommendation No. 1: Get the Lead Out	16
Recommendation No. 2: Build an EJ Community for Collective Impact and a Catalyst for Change	17

A. Embedding environmental justice in current work.....	18
B. Advocating for needed data and resources.....	19
C. Eliminating harmful household toxic exposures	20
D. Building and enhancing grassroots/community organizing capacity	20
E. Assessing the extent to which existing laws are not being properly implemented or enforced	20
 Recommendation No. 3: Update and Enhance the State’s Environmental Equity Policy and Permitting Processes	 21

Introduction and Overview

The term “environmental justice” (or “EJ”) has been described in varying ways. The U.S. Environmental Protection Agency (“EPA”), for example, describes environmental justice as follows:

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.¹

While environmental justice sometimes is viewed as addressing the disproportionate burdening of environmental and/or public health impacts on minority or low-income communities, often in the urban context, it also can include the disproportionate or inequitable sharing of *benefits* that improve the environment, health, and quality of life of communities. The Commonwealth of Massachusetts’ EJ policy, for example, acknowledges the importance not only of avoiding disproportionate impacts, but also ensuring the equitable distribution of benefits, stating:

Environmental justice is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.²

In all cases, environmental justice requires the meaningful involvement of all members of the public who are or may be affected. In addition to meaningful opportunities for the public to be informed and heard, “meaningful involvement” should include the ability for public input to influence decision-making. The EPA specifically defines “meaningful involvement,” as used in its above-quoted EJ definition, to mean that:

(1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or public health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decision

¹See EPA’s environmental justice website, at <http://www.epa.gov/environmentaljustice/>

²See <http://www.mass.gov/eea/grants-and-tech-assistance/environmental-justice-policy.html>

making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

This report assesses the issue of environmental justice in New Hampshire. In doing so, it considers environmental justice in the broadest sense, considering both environmental and public health impacts that are disproportionately borne by minority and/or low-income communities *and* the inequitable sharing or distribution of benefits in a way that disadvantages, or perpetuates adverse conditions for, certain communities, and exploring issues in both the urban and rural contexts. The purpose of this report is to assess the types of EJ issues facing communities in the Granite State, the work that is currently underway to address the various issues, and where the greatest, most strategic needs for resources and engagement exist for advancing environmental justice. It concludes with the identification of key environmental justice issues in New Hampshire and recommendations for strategically addressing them.

Methodology

This report is the result of a qualitative assessment of environmental justice issues in New Hampshire, premised on information, observations, and insights provided by numerous individuals engaged in a broad base of substantive work, and with expertise in a diversity of disciplines.

As the first phase of this assessment, Conservation Law Foundation (“CLF”) conducted more than thirty interviews of individuals working in a variety of fields or otherwise exposed to EJ-related issues.³ In every instance, for purposes of framing the conversation, environmental justice (a term which, it became clear, is not widely used in New Hampshire) was described in the broadest sense as pertaining to urban and rural communities; minorities and socio-economically disadvantaged people; disproportionate environmental / public health burdens; and inequitable sharing of benefits. In addition to their own information, observations, and insights, interviewees were asked to identify other individuals who, based on their work or area of expertise, might have valuable information, observations or insights. Most, but not all, of these recommended individuals were contacted for interviews.

As the second phase of this assessment, on October 28, 2013, following the conclusion of most interviews, CLF convened a meeting of interviewees to present a synthesis of what had been learned through the above-described interview process; to provide preliminary conclusions; and to receive input on its synthesis and preliminary conclusions. The meeting, held at the Manchester Health Department, was attended by fifteen stakeholders, most of whom participated directly in the phase-one interview process.

³ The list of individuals in the Acknowledgments section at page (i) of this report includes, but is not limited to, the many individuals who were interviewed.

This report – and the analysis and recommendations it contains – is premised on the information, observations, and insights obtained in phases one and two of this assessment process.

Community Context

As discussed above, environmental justice was considered in both the urban and rural contexts. In addition to these general categorizations of community-types, another community of particular interest emerged in the process of this assessment: New Hampshire’s growing refugee community. The following general observations about these three types of communities emerged during the interview process.

Urban Communities

The highest concentrations of minorities in New Hampshire are in the state’s two largest cities: Manchester and Nashua. *See* page 4, Fig. 1. In both cases, minority populations are concentrated in the central areas of the city. *See id.* These cities, along with Concord and Laconia, are where refugees are being resettled. Manchester has received a particularly large number of refugees over the years, having received, during the 2000 – 2011 timeframe, 3,414 refugees from 29 countries, including Bhutan, eastern Europe and several African nations. *See* Appendix at page A-1. The central urban areas of Manchester and Nashua contain old housing stock with attendant problems (such as lead paint) discussed later in this report. This is a problem shared by other cities, such as Berlin, Franklin and Claremont, which are considered hot spots for lead poisoning. Manchester, in particular, seems to have a “perfect storm” of challenges in its city center, including a concentration of vulnerable populations; a concentration of poverty (childhood poverty is the highest it has ever been, with over 53 percent of children on public assistance); a concentration of old housing stock; the demands associated with an increasing large and diverse population of refugees / immigrants, with more than 70 languages spoken in the city’s schools; and a high rate of transiency (*e.g.*, from neighborhood to neighborhood, and from school to school⁴) posing a major challenge for municipal officials in providing effective services to vulnerable children.

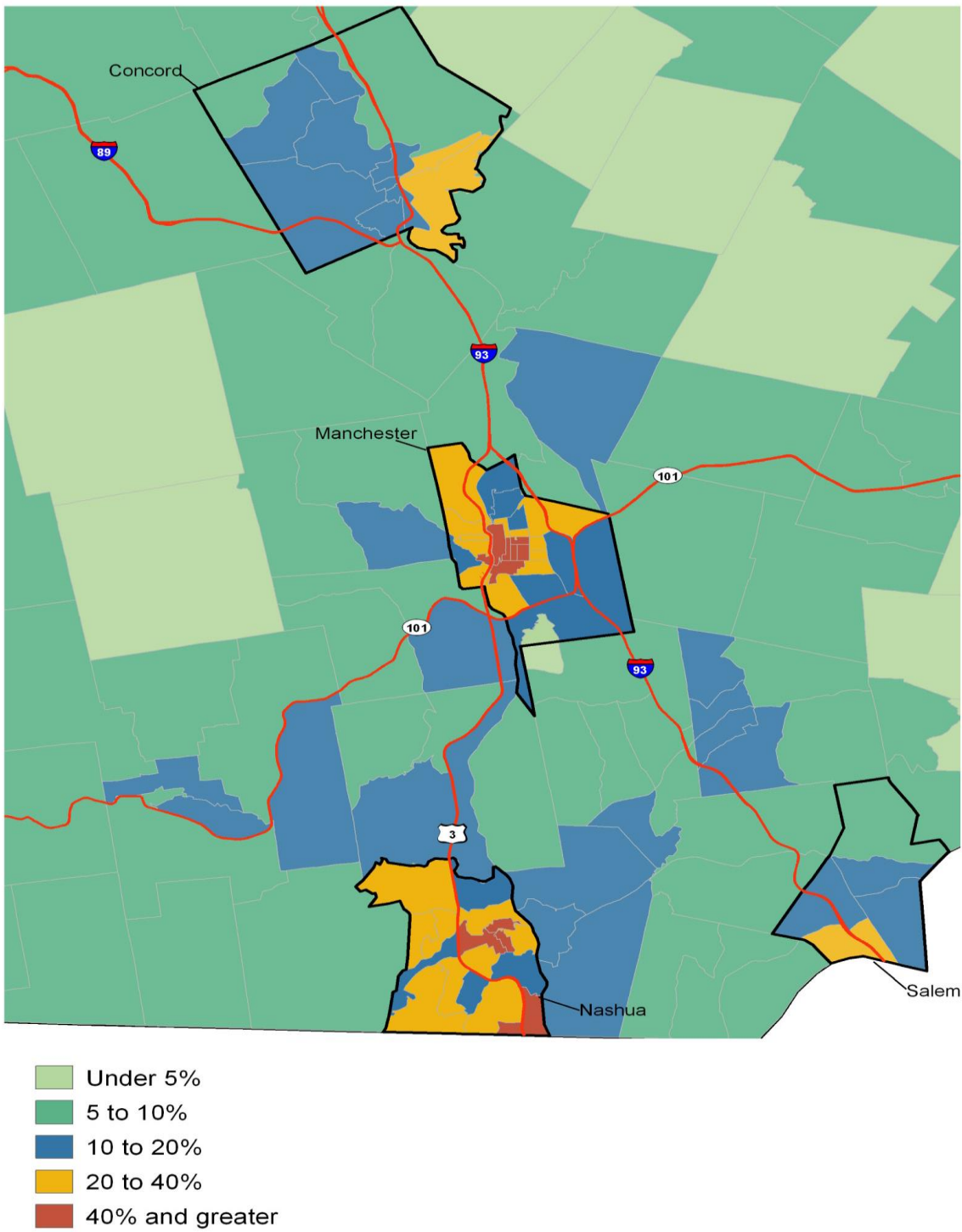
Rural Communities

Generally speaking, communities in southern New Hampshire are faring better than those in the northern portion of the state. There is a good deal of poverty in the North Country, where the population is generally less well-educated, with less income, with less economic opportunity, and with a lack of mobility options that requires personal transportation and attendant costs. It was observed that, in some respects, New Hampshire’s North Country is the reverse of the “classic” environmental justice community, in that it is the beauty and cleanness of the place that keep some people there despite the economic disadvantages of staying. Many of New

⁴ At the October 28 stakeholder meeting, one stakeholder noted that approximately 400 of the 600 school children at Manchester’s Beech Street school moved in or out of that school.

Figure 1

Percent minority under age 18 by census tract, 2010—Concord, Manchester, Salem, and Nashua



Source: Kenneth M. Johnson, Carsey Institute, "New Hampshire Demographic Trends in the Twenty-First Century"; U.S. Census 2010

Hampshire's rural communities, particularly those located in the North Country, have scarce resources. In towns without large employers, residents are experiencing higher tax rates and municipal budgets often are cut in ways that reduce services and undermine the ability for municipalities to access grants and economic development opportunities. Access to improved medical care in rural communities has improved. Among many rural communities, there is a cultural perspective that values independence and a desire to be "left alone" with respect to land use and environmental regulation. This cultural perspective, coupled with a sense of "yankee pride," often prevents many people from accessing social service benefits to which they are entitled. It was noted during the October 28 stakeholder meeting that while the more independent and diffuse nature of the state's rural population can make it more difficult to recognize and reach the rural poor, it is essential to "think statewide" and consider vulnerable rural populations and their needs.

New Hampshire's Growing Refugee Community

New Hampshire has two refugee resettlement agencies: Lutheran Social Services and the International Institute. Refugees are currently resettled in Manchester, Concord, Laconia and Nashua. Manchester has received the most resettled refugees, having received 3,414 refugees in the eleven years spanning 2000 to 2011. *See* Appendix at page A-1. Resettlement agencies have only a short period of time – typically six months – to provide assistance for refugees. The resettlement system as a whole is not well funded; two stakeholders expressed concern that the system is not sufficiently well connected with the needs and challenges facing refugees. It was noted that teaching refugees basic life skills in the U.S. is a major challenge during resettlement, as such information often is provided in the first days of resettlement at a time when people are overwhelmed and unable to absorb and process information.⁵ After initial resettlement, many refugees relocate to other communities and sometimes other states.

The challenges facing refugees include a lack of affordable housing; substandard housing; discrimination in housing (though it is not a common occurrence); language and communication barriers; and lack of transportation. Refugees often find themselves in substandard housing, exposed to associated risks such as lead poisoning. Because of nutritional deficiencies, some refugee children are particularly vulnerable to lead poisoning.⁶ Manchester, for example, has experienced a number of lead poisonings among refugee children, including the death of a Sudanese toddler in 2000.

⁵ As one example, a stakeholder described having visited a refugee and finding that he was using toilet-cleaning detergent for washing dishes.

⁶ *See also* "Elevated Blood Lead Levels in Refugee Children – New Hampshire, 2003 – 2004" (available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5402a4.htm>).

The Environmental Justice Landscape in New England and New Hampshire

Stakeholder interviews revealed an interesting distinction between the New England region (particularly southern New England) and New Hampshire with respect to organizational infrastructure and attention devoted specifically to the issue of environmental justice.

New England

At the New England level, the U.S. Environmental Protection Agency's (EPA) regional office, in Boston, has a small staff of environmental justice specialists working to implement EPA's EJ policies, including EPA's "Plan EJ 2014," which reaffirms environmental justice as an EPA-wide priority and is aimed at integrating EJ into every EPA program. EPA has an EJ small grants program, with grant awards in the \$25,000 to \$30,000 range, and typically makes four grant awards annually. The small grants program is viewed by EPA as a way for organizations to "get their foot in the door" in addressing EJ issues of concern. This year, EPA is issuing a larger, Collaborative Problem-Solving (CPS) grant in place of the small grants program. The CPS grant award will be up to \$120,000 to be used over a two-year period, and will require more stakeholders to come together – including stakeholders from different fields – to collaboratively address an identified problem. EPA anticipates awarding one such grant per region. EPA staff conduct quarterly calls for the New England states to discuss EJ issues.

At the regional level, there exists a discrete network of stakeholders addressing issues of environmental justice. Specifically, two non-profit organizations devoted to EJ – Alternatives for Community and the Environment (ACE) and the Rhode Island Environmental Justice League – have led (with EPA funding support) the formation of a regional collaboration called the New England Environmental Justice Forum. The Forum is an informal group of organizations working on social injustice issues in the environmental context. It occasionally gathers both in person and through issues-based webinars to share information, lessons-learned, and victories. It is hoped that the Forum will build a researchers network, namely a network of researchers and experts who can be tapped to assist on EJ issues as they arise. The Forum has a much higher level of participation from southern New England states (CT, RI and MA) than from northern New England.

New Hampshire

The N.H. Department of Environmental Services (NHDES) was the first state agency in the nation to adopt a policy addressing environmental justice. Specifically, in 1994, NHDES adopted its "Environmental Equity Policy," which includes the following policy statement: "The NH Department of Environmental Services will, within its authority, ensure fair and equitable treatment of all New Hampshire citizens in the implementation of federal and state environmental laws, rules, programs, and policies." See Appendix at page A-2. The policy contains a background statement equating "environmental equity" with "environmental justice"

and stating: “One of the primary factors contributing to ‘environmental inequities’ is the location of many minority and lower income populations in more densely developed and industrialized areas with greater concentrations of environmental hazards.” *Id.* The policy includes an implementation strategy with specific actions NHDES is to take in various internal activities and in its strategic plan. *Id.*

NHDES has a staff person who, in addition to other responsibilities, is designated as the agency’s environmental justice coordinator. The NHDES environmental justice coordinator participates in periodic EJ calls organized by EPA. It was noted that EPA’s environmental justice mapping tool does not work well in New Hampshire (*i.e.*, EPA’s maps do not accurately identify what might be considered EJ communities here). NHDES has no funding from EPA, or from the general fund, to support its EJ-related participation with EPA. Although recognizing the need, it also lacks the resources and internal capacity to translate materials, such as mercury-related fish advisories, into other languages. NHDES’s Environmental Equity Policy was characterized as vague and in need of being updated.

New Hampshire does not have an organized environmental justice community. Indeed, while there are organizations that address issues related to EJ, there is no single organization in New Hampshire organized around and specifically dedicated to the concept of environmental justice. For example, there is no New Hampshire equivalent to ACE or the Rhode Island Environmental Justice League; nor are any New Hampshire organizations actively engaged in the New England Environmental Justice Forum. With the exception of The Way Home, in Manchester, New Hampshire organizations are not tapping into the EPA’s Environmental Justice grant programs.⁷

Environmental Justice in NH: The Substantive Issues of Concern

Stakeholder interviews led to the identification of, and discussions about, numerous issues broadly related to environmental justice. In particular, the following issues were identified and discussed over the course of the stakeholder interview process:

- Facilities siting / operations
- Substandard housing and the associated issues of lead, pests, asthma and carbon monoxide
- Transportation
- Access to food
- Working conditions
- Energy

⁷ The Way Home has obtained EJ small grants from EPA to work on issues related to lead poisoning, asthma triggers, and, most recently, bed bug infestations.

Many interviews also touched upon overarching procedural issues around citizen engagement and the ability (or inability) of citizens to meaningfully influence decisions affecting them and their communities. A detailed discussion of each of these issues follows.

I. Facilities Siting / Operations

It was suggested that environmental justice concerns can arise from the siting and operation of facilities in two ways: (1) through the siting of facilities with adverse environmental and / or public health impacts in places of least resistance (*i.e.*, in vulnerable, EJ communities); or (2) through economically disadvantaged people self-locating to places where facilities have driven property values down as a result of their impacts. Either scenario is a concern, as it would lead to a disproportionate burden for vulnerable people.

NHDES is sensitive to the siting and operation of certain types of facilities that can result in adverse local impacts and concerns, such as waste facilities and asphalt plants. In furtherance of its Environmental Equity Policy, and with funding from the Centers for Disease Control, NHDES coordinates with local municipal officials to hold public information sessions as a means of engaging and informing the public in permitting processes involving such facilities.

In the urban context, stakeholders did not identify any specific facilities of concern. However, in Manchester, there are a number of small businesses, such as auto-body shops and dry-cleaners, located in the urban core, in close proximity to residences. Manchester Health Department officials embarked on a study several years ago to map such facilities in relation to residences and to assess any effect they might have on asthma rates and other health problems. The mapping process identified instances in which facilities with local impact were in close proximity to residential dwellings (*e.g.*, an auto-body shop with an exhaust blowing toward an apartment building). However, resource constraints precluded the study's completion, and the linkage between land use activities and asthma and other health issues. An environmental / community epidemiologist, to assess and analyze determinants of poor health, was identified as an ongoing resource need, and it was noted that a third party assessment of the spatial relationships between industrial land uses and residences would be valuable.

In the rural context, two stakeholders had direct experience, as citizens, regarding the permitting and operation of waste facilities: the municipal solid waste landfill operated by North Country Environmental Services (a subsidiary of Casella Waste Systems) in Bethlehem, and the municipal solid waste incinerator operated by Wheelabrator in Claremont. In both instances, the NHDES Environmental Equity Policy, and the public information sessions and hearing, were viewed as having no meaningful impact. Rather, public information sessions and hearings were perceived to be largely bureaucratic exercises with no real influence on the ultimate permitting decision. The Environmental Equity Policy was perceived to be of no consequence, as it is not

linked to, and not authorized to affect, applicable permitting regulations and associated decisions.

The two stakeholders involved with the above-referenced waste facilities reported additional concerns with respect to the ability for citizens to engage in a meaningful way. Such concerns included:

- An overly restrictive application of the legal doctrine of “standing” by administrative appeal councils, precluding or discouraging affected individuals from appealing permit decisions;
- An imbalance of power between concerned citizens and local officials (*e.g.*, select boards) lacking in resources and sophistication, and project proponents with significant financial, political, and legal resources;
- A perverse incentive on the part of NHDES (*i.e.*, through the collection of emissions-based fees), to grant permits for impactful activities.

Concerns were also expressed that industry-driven rules have become the standard for protecting the public health, and that regulators cannot properly assess the cumulative and synergistic impacts of the multiple toxins associated with certain facilities. With respect to the latter, and based on the concern that cancer-cluster data are almost always in a statistical “gray area,” it was suggested that adoption and implementation of the precautionary principle would be preferable. One stakeholder suggested, however, that *some* level of risk inherently can be associated with many socially useful activities, and that the precautionary principle could preclude such activities.

Also in the rural context, two stakeholders noted that – particularly if environmental justice considerations were to include impacts on property values – the proposed Northern Pass electric transmission project could be considered an EJ issue.

II. Substandard Housing

Substandard housing associated with an aging housing stock was identified as a significant, overarching problem by numerous stakeholders. It was observed that as housing stock falls into disrepair, it attracts people who cannot afford better, safer housing, thereby disproportionately exposing economically disadvantaged people to the various associated dangers. Several stakeholders identified absentee landlords as a significant problem in Manchester. Concerns were also expressed with respect to weak housing codes; weak *enforcement* of housing codes; people being located into unacceptable housing conditions by local welfare departments and / or refugee resettlement programs; and people paying too much for substandard housing and not understanding their legal rights. It was noted that there is a huge deficit in affordable housing, and that while there has been some progress with respect to work-force housing, the state needs to take a stronger role with respect to *affordable* housing. Housing quality was identified as the

biggest environmental issue facing the people of Manchester and as a significant issue in Nashua. In both cities, the most economically impoverished people, often with high concentration of minorities, are living in the oldest housing stock.⁸ The environmental and public health threats associated with aging housing stock include the following.

A. Lead Poisoning

Lead poisoning caused by lead paint was repeatedly raised as a major problem of concern. The problem exists statewide as a result of New Hampshire's aging housing stock. Manchester was repeatedly referenced as a community that has suffered from this problem, having experienced the death of a two-year-old Sudanese girl in 2000. It was noted that refugee children can be especially vulnerable to lead poisoning as a result of nutritional deficiencies. In the mid-2000s, a group of Somali children living in a multi-unit dwelling in Manchester suffered lead poisoning. The lead poisoning problem persists, and goes beyond refugee children, with one stakeholder explaining that she had very recently exposed to the media a significant poisoning in Manchester, in which the child's blood lead level was found to be 36 micrograms per deciliter (more than three times the state's action level of 10 ug/dl, and more than six times the Centers for Disease Controls' recommended reference level of 5 ug/dl for purposes of identifying at-risk children).⁹ Nashua, Claremont, Newport, Rochester, Laconia, Franklin and Berlin were also identified as communities experiencing the problem as a result of concentrated aging housing stock.

According to one stakeholder with ongoing expertise with the issue of lead poisoning, Nashua does not have a high level of poisoned-child cases, nor does New Hampshire generally in comparison to other states, however the number of documented cases are essentially false because the state does not require universal testing of children under six years of age, resulting in a large number of children not being tested. It was noted that in Massachusetts, for example, every child under six years of age is tested at least once before entering an accredited kindergarten; children living in certain designated places are tested annually for the first six years of their life; and, overall, 86 percent of children under six years of age are tested. It was stated that in New Hampshire, to the contrary, children are tested at the ages of one and two if they live in certain designated places, and a large number of children are falling through the cracks, with screening after the age of two almost non-existent.

⁸ See, e.g., Appendix pages A-4, A-5, from the City of Nashua's 2011 Community Health Assessment, showing the census tracts with high percentages of both poverty and pre-1950s housing stock. See also Appendix page A-3, a City of Manchester map depicting older housing stock and incidence of childhood elevated blood lead levels (compare this map with Figure 1 at page 4).

⁹ Regarding Manchester, see also, Hayward, Mark, "Manchester Slow to Get the Lead Out," N.H. Union Leader (Oct. 16, 2013), available at <http://www.newhampshire.com/article/20131017/LOCALVOICES08/131019359>. With respect to the CDC's reference level for identifying at-risk children, see http://www.cdc.gov/nceh/lead/ACCLPP/Lead_Levels_in_Children_Fact_Sheet.pdf.

As one stakeholder explained with respect to lead poisoning: “we’re just scratching the surface of the problem,” trying to triage based on where kids have been poisoned, and working on a reactive basis to remediate. There was widespread acknowledgment about the lack of resources to address the problem of lead poisoning. It was stated, for example, that the state has scaled back its program as a result of funding constraints, and that although the “triggering” blood lead level was statutorily reduced from 20 micrograms per deciliter to 10, it is triaging cases by addressing only those ones involving a blood lead level of 15 or higher. It was noted that federal funding for lead programs in the state (administered by Manchester, Nashua and the Belknap-Merrimack Community Action Program) are the result of competitive grant programs, as opposed to block grants, and that their long-term reliability is not certain. Indeed, Nashua went several years between federal grants, which was a problem for that community’s efforts. It was also noted that in New Hampshire the consequences for landlords with lead problems are too weak in comparison to other states, making it difficult to encourage landlords to proactively take action to abate lead problems. It was also noted that local ordinances are too weak; for example, Manchester’s lead paint ordinance addresses only loose and flaking paint, to the exclusion of lead dust generated by moving parts (*e.g.*, windows). The reactive nature in which the problem is addressed (*i.e.*, waiting until a child suffers poisoning to require action) was repeatedly raised as a concern.

One stakeholder stated that lead poisoning is a significant environmental justice issue because it disproportionately affects the poor, because it has not received the attention it deserves from the state, and because there are no provisions to assist families who are vacated from residential units when remediation is required.

B. Pests / Bed Bugs

The problem of pests, and particularly bed bugs, was identified by many stakeholders as a problem facing certain communities, particularly in substandard and transient housing. Recently enacted state legislation,¹⁰ which defines the rights and responsibilities of landlords and tenants in addressing the problem of bed bugs, is viewed as a step in the right direction. A Bed Bug Action Committee is preparing materials in multiple languages to educate people about bed bugs, including the many vectors by which they can spread (*e.g.*, used furniture). In Manchester, The Way Home has been working with responsible pest management companies, as well as landlords and tenants, to better address the problem.

Some stakeholders raised the concern that people are exposing themselves to toxins through the use of treatments that are both potentially harmful, and ineffective. One stakeholder noted the widespread use of a do-it-yourself chemical treatment for bed bugs called “Hot Shot.” While she does not know what chemicals are present in the product, she is aware of at least one person

¹⁰ The legislation, HB 482, was enacted during the 2013 legislative session and became effective January 1, 2014. It is codified in RSA 48-A:14, RSA 540:2, and RSA 540:13-e.

using it to spray his apartment on a daily basis. According to one stakeholder, the Boston Housing Authority conducted a HUD-funded survey of residents regarding the use of pesticides and, as a result, learned of frequent use of pesticides, including banned products, for controlling pests. Recognizing that this is an ongoing problem, the Nashua Housing Authority will be starting a pilot program in 2014 to train a group of residents about proper pest management (without the use of chemicals), who in turn will train others in their communities.

C. Asthma

Asthma can be caused by multiple factors, including exposure to air pollution¹¹ and substandard housing conditions. In Manchester, for example, 2011 data revealed an asthma rate of 17.4% total (and 29.5% among adult residents with an income of less than \$25,000) as compared to New Hampshire's rate of 11.4 percent.¹² Asthma can be caused by exposure to outdoor air pollution as well as residential living conditions such as dust mites living in carpets, or molds. With respect to the latter, asthma and lead problems often go hand-in-hand. As a result, efforts are being made at the state level, and in communities like Manchester, to address asthma through a more holistic "Healthy Homes" approach which also addresses lead poisoning and other health issues related to housing.

D. Carbon Monoxide

It was noted by a stakeholder with expertise in the area of manufactured housing that many homes – mostly older ones with older systems – are experiencing carbon monoxide problems, to the degree that "tightening up" such homes through weatherization practices, without also correcting furnace ventilation, could lead to mortalities. According to a September 2013 report by the N.H. Community Loan Fund, "84 of the 382 homes weatherized through the [Community Loan Fund's] project required new furnaces because their old furnaces were hazards to the health and safety of the 177 people who live in those homes."¹³

III. Transportation

Transportation was identified as an issue by numerous stakeholders. Specifically, stakeholders identified mobility as a challenge for many people in New Hampshire, ranging from people in the North Country to refugees in the southern part of the state. One stakeholder identified transportation as "always near the top of priorities in community needs assessment." Another stakeholder identified transportation – *e.g.*, public transit and complete streets – as a real issue, but as one that may not be at the top of people's priorities. During the stakeholder meeting, one

¹¹ See brief discussion above (Subpart I, Facilities Operation and Siting) regarding the consideration of certain activities potentially causing asthma.

¹² Thomas, Anna J., "What Kind of Future for Manchester's Residents Are We Collectively Working Towards?"

¹³ WEATHERIZATION: GENERATING ECONOMIES OF SCALE WITHIN MANUFACTURED-HOME COMMUNITIES, Richard A. Minard, Jr., V.P. for Policy, N.H. Community Loan Fund (Sept. 2013), available at: http://communityloanfund.org/sites/default/files/res_generating-economies-weatherization.pdf.

participant emphasized the challenge of transportation for New Hampshire's rural poor, noting "your car is your disaster waiting to happen."

In terms of public transit, it was noted that while a real issue, Manchester's local transit service has improved greatly and Nashua's service is generally well located in terms of serving low-income communities. The Granite State Organizing Project is currently working on a project to expand local transit opportunities connecting Manchester and Goffstown. Concern was expressed with respect to access to intercity transit from Manchester, following the relocation of much intercity transit from the Manchester transit station to park-and-ride facilities on I-93.

It was noted that the state needs to play a much stronger role in transportation and affordable housing.

There are neighborhoods in Manchester that are in significant need of traffic calming. It was noted that urban planning in Manchester has not yet succeeded in addressing pedestrian accessibility and safety issues, and that a series of one-way streets in the city's core (each with 35 mph speed limits) creates unsafe pedestrian conditions. According to the Manchester Health Department, neighborhoods in Manchester's urban core have the highest rates of nonfatal pedestrian injury. *See Appendix at page A-6.* Similar concerns were not identified in Nashua.

One stakeholder identified the health impacts of highways on nearby residents as an issue that has not been adequately considered.

IV. Access to Food

Food security, including access to healthy food, was identified by a number of stakeholders as an issue of concern. It was noted that New Hampshire is not producing nearly as much food as it could or should.

Stakeholders stated that in both the rural and urban contexts, many people have difficulty accessing healthy foods. A report prepared by the Carsey Institute, combining the factors of poverty and population density (the latter as a proxy for transportation cost), along with access to food retailers and public programs, concludes that the highest risks of food insecurity are in the rural context (though it specifically notes that Manchester is at serious risk of food insecurity on the basis of poverty alone).¹⁴ The Upper Valley / Lake Sunapee Regional Planning Commission has been engaged in a comprehensive assessment of accessibility – including for pedestrians – to stores providing healthy foods. Manchester's Health Department has been working to promote the presence of affordable, healthy-food options in local corner stores. It was noted that in the North Country, the local food movement has been very slow to catch-on.

¹⁴ Wauchope, Barbara and Sally K. Ward, UNH Carsey Institute, *MAPPING FOOD INSECURITY AND FOOD SOURCES IN NEW HAMPSHIRE CITIES AND TOWNS* (Spring 2012), available at <http://carseyinstitute.unh.edu/sites/carseyinstitute.unh.edu/files/publications/IB-Wauchope-CAofNH-NH-Food-Insecurity.pdf>.

Community gardens are viewed as an important asset. It was noted that not every town has community gardens, especially towns where people have access to their own land; rather, they are typically found in the larger, more urbanized communities. In Manchester, there are two small community gardens run by a non-profit agency on city land. Also in Manchester, Granite State Organizing Project and The Way Home have been working to establish additional gardens. There are long waiting lists for Manchester's existing community gardens, and it is believed that demand exceeds the amount of available land. Refugees often rely upon community gardens to grow their own food.

The University of New Hampshire's Sustainability Institute is specifically addressing environmental justice issues in the context of food systems both at the regional level, through its Food Systems New England (FSNE), and on the state level. On the regional level, FSNE, which involves approximately 25 stakeholder participants from all six New England states, is transitioning to the next phase of its work in defining a sustainable food system future for the region. The project has resolved that race and food justice are fundamental issues to be addressed, and will be a foundational principle of the project's work. FSNE's next food summit, to be held in Providence, Rhode Island in June 2014, will shine a light on issues of food access. On the state level, the Sustainability Institute is serving as the backbone organization in a network of organizations focused on developing a New Hampshire food system and, in particular, on mapping a process for development of a New Hampshire food strategy. The network is moving into its second year and has explicitly committed to addressing issues of food justice for New Hampshire's most vulnerable populations as part of its food strategy.

V. Working Conditions

Some stakeholders identified unsafe or unhealthy working conditions as a concern. More particularly, it was noted that people working in certain fields (such as janitorial services), and immigrants with language barriers, sometimes are provided inadequate training, leading to exposure to dangerous conditions, including exposure to toxic chemicals. A recent survey of immigrant workers found that significant percentages of survey respondents "always" and "sometimes" experienced work conditions involving dangerous chemicals, as well as conditions involving tiring or painful positions and repetitive hand, arm or shoulder movement.¹⁵ The report also found that 227 respondents out of 366 (62 percent) did not know that their medical bills would be paid by workers' compensation if they are hurt on the job.¹⁶

VI. Energy

Stakeholders with N.H. Legal Assistance (NHLA) have been working for several years to represent the interests of low-income people on the issues of energy costs and energy efficiency.

¹⁵ N.H. Division of Public Health Services, OCCUPATIONAL HEALTH SURVEILLANCE IMMIGRANT SURVEY REPORT (Feb. 2013), available at <http://www.dhhs.nh.gov/dphs/hsdm/ohs/documents/ohsimmigrant2013.pdf>.

¹⁶ *Id.*

The state's Electric Assistance Program, which is funded with 1.5 mils from the Systems Benefit Charge, is sufficient to assist approximately 33,000 households. The program, however, does little good for the "working poor," as it does not provide assistance to those who are above 175% of the federal poverty level. The state's CORE program, which supports energy efficiency, fully subsidizes energy efficiency improvements for people at 200 percent or less of the federal poverty level. Demand for this program far exceeds available funding; the program has yet to exceed the 20,000 unit mark, which means at the current rate it would take 50 years to cover the full eligible housing stock.

VII. Climate Change

Three stakeholders specifically identified climate change as an issue. Two stakeholders raised concerns with the issue of flooding and associated loss of property and public infrastructure (*e.g.*, roads), noting that socioeconomically disadvantaged people are particularly vulnerable. One stakeholder, in Manchester, raised concerns about the health effects of severe heat events and has requested that local hospitals provide data to help determine whether, to date, there has been a correlation between heat events and emergency room visits.

VIII. Public Engagement / Participation

As a general matter, it was noted that many people simply do not have the time and capacity to identify and engage in matters affecting their communities and their health, and that this lack of time and capacity is particularly acute among low-income people who are focused on their own economic circumstances. It was observed that there is not a great deal of public engagement from low-income communities in Manchester. As an example of the difficulty engaging low-income communities, one stakeholder spoke of the difficulty generating a strong public turn-out among low-income people in Nashua when a low-income neighborhood was slated to be demolished to build a park.

Organizing low-income people to engage in the public legislative process has proved to be a major challenge. As one stakeholder described it, the need to engage people in the legislative process is labor-intensive and often of a "last minute" nature; and often it is difficult to find people who trust in the legislative process and who do not fear adverse consequences for doing so. Stakeholders described the process as one that is intimidating to many people, noting that many people do not feel equipped to be effective and make a difference. Challenges as basic as transportation (*i.e.*, getting people to Concord for legislative hearings) add to the difficulty.

Other specific challenges to meaningful public engagement include the following:

- Immigrants often do not understand the openness of our culture, and their legal rights, causing them to “keep their heads down” with respect to landlords and public authorities, for fear of potential retribution if they raise concerns.
- With an increasing number of immigrants in communities like Manchester, language can be a significant barrier to effectively communicating information to the public, as well as to public engagement.
- Discrimination or feelings of not being welcomed may be playing a role. One stakeholder expressed the view that people of color in Manchester almost universally feel dismissed and unwelcomed when trying to participate in public processes, and that, generally speaking, low-income people in New Hampshire – in the context of a relatively affluent statewide population – feel burdened by a feeling of shame for their economic circumstances.
- There is a greater need for resources at the community-organizing level, and for statewide organizations to coordinate more closely with local community groups and citizens.
- There is a perception that citizen participation, and NHDES’s Environmental Equity Policy, will not influence the outcome of permitting decisions.
- An overly-restrictive application of the legal doctrine of standing has at times precluded affected citizens from participating in the administrative permit appeals process and has a chilling effect on citizens’ willingness to participate in such appeals.

Environmental-Justice Needs and Opportunities

There are clearly important needs and opportunities for addressing environmental justice issues in New Hampshire. As discussed below, these needs and opportunities range from addressing the critical issue of lead poisoning, which has been and continues to disproportionately affect the health and well-being of low-income, minority and immigrant populations, to building a robust environmental justice community in New Hampshire to advance needed solutions.

Based on a synthesis and analysis of the valuable input received from stakeholders, the critical needs and opportunities are as follows:

Recommendation No. 1: *Get The Lead Out*

The problem of lead poisoning remains significant and was frequently identified as a major, ongoing concern. In November 2008, a legislatively established lead study commission issued a report discussing the problem of lead poisoning in New Hampshire and recommendations for addressing it. In 2009, the legislature enacted various amendments to New Hampshire’s lead paint poisoning prevention statute, RSA Chapter 130-A, including lower lead poisoning

thresholds,¹⁷ and requiring inspections of all dwelling units in any multi-unit building having a unit that is the subject of an inspection. Solving the problem, however, remains significantly under-resourced, with inadequate screening of vulnerable populations, inadequate enforcement, and a generally reactive approach premised on children being poisoned as a trigger to remediation. Building on the legislative work that took place in the 2007 - 2009 timeframe, including important recommendations and economic analysis developed at that time, there should be a renewed effort to tackle this dangerous and unfortunate problem, including through the adoption of applicable recommendations of the lead study commission and innovative models employed in other states. In addition to avoiding unnecessary lead poisonings in the future, such an effort could play an important role in building a robust and effective environmental justice community in New Hampshire (Recommendation No. 2, below), which could and should lead to other important benefits for the state and its most vulnerable people.

Recommendation No. 2: Build An EJ Community For Collective Impact And As A Catalyst For Change

During the stakeholder interviewing process, it became evident that the terminology and concept of “environmental justice” is largely absent in New Hampshire, even among individuals and organizations working on issues such as lead poisoning that can be viewed as EJ issues in the most classic sense of the term (*i.e.*, minority and low-income people suffering disproportionate environmental harm). This observation is consistent with the fact that with minor exception, New Hampshire has not participated in, or sought to benefit from, existing EJ infrastructure (such as the New England Environmental Justice Forum) or existing EJ funding opportunities (such as EPA’s grant programs).

One explanation for New Hampshire’s lack of identification and involvement with environmental justice may be the rural character of much of the state. New Hampshire simply does not have the same number of urban communities fitting the “classic” EJ mold as Massachusetts, Connecticut and Rhode Island. Thus, narrow perceptions of “environmental justice” as being focused on race, and on urban communities, may be creating a barrier to New Hampshire identifying with the issue. This barrier is one that can and should be addressed both in New Hampshire and at the regional level by ensuring a broader meaning of environmental justice – one that will be compelling and inclusive of issues and communities in the rural context. Regardless of terminology and the breadth of the meaning of environmental justice, New Hampshire does, in fact, have communities – particularly Manchester and Nashua – facing environmental justice issues even in the more narrow sense of the term.

¹⁷ RSA 130-A:2 was amended to require the N.H. Department of Health and Human Services (NHDHHS) to “[i]mplement comprehensive management for cases of lead poisoning when a child’s blood lead level meets or exceeds 10 micrograms per deciliter,” as opposed to a prior triggering lead blood level of 15 micrograms per deciliter. RSA 130-A:5 was amended to require NHDHHS to “investigate cases of lead poisoning in children . . . whose blood lead level meets or exceeds 10 micrograms per deciliter” as opposed to a prior level of 20 micrograms per deciliter.

Despite the foregoing, stakeholders throughout the course of this project evidenced a strong interest in environmental justice, including an interest in elevating the issue in New Hampshire. At the October 28, 2013 stakeholder meeting in Manchester, a discussion emerged regarding the terminology of “environmental equity” (as is used in NHDES’s policy) as compared to “environmental justice.” Emerging from the discussion was the sentiment that the terminology and concept of environmental *justice*, as compared to environmental *equity*, carries more weight, incorporates the concept of empowerment, and conveys stronger values in a more focused way. Following the stakeholder engagement that has taken place as a result of this project, a logical next step would be to organize a New Hampshire EJ community that can catalyze needed change by identifying and pursuing key issues in the state, and by tapping into and leveraging the regional EJ community.

Without pre-determining an agenda or outcome of a coordinated EJ community in New Hampshire, specific issues that are ripe for consideration include, in addition to the issue of lead poisoning (Recommendation No. 1, above), the following:

A. Embedding environmental justice in current work. In a March 2011 PLAN TO ADDRESS HEALTH DISPARITIES AND PROMOTE HEALTH EQUITY IN NEW HAMPSHIRE, New Hampshire’s public health community specifically acknowledged social determinants of health and health disparities for minority populations, stating:

In 2010, America’s Health Rankings rated NH the third healthiest state overall in the United States. But given the results of the reports and qualitative inputs examined for this plan, the question is: for whom? It is clear that the benefits of our healthy environment and our healthcare system are not equally distributed and that minorities and low-income individuals in NH face a range of challenges in seeking a healthy lifestyle. Newly arrived refugees and immigrants, as well as local residents of color, regularly experience discrimination and inequity in our communities. This directly impacts their health and ability to achieve well-being. The importance of raising awareness of issues unique to NH’s minority populations is increasing in urgency as our population becomes more diverse and as these disparities persist.

....

Due to NH’s history as a predominantly white state and our overall image as a healthy place to live, the issues unique to racial, ethnic and linguistic minorities have remained invisible in many programmatic and policy arenas.

....

Promotion of health and equity in NH also requires awareness of the social determinants, culture, and environments affecting racial, ethnic and linguistic minorities. The current lack of awareness often results in systematic and structural inequities in minorities’ interactions with educational, housing, employment, and health care systems, as well as in health status and health outcomes. Policy and institutional change as well as outreach to key leaders and

collaboration across sectors are needed to help ensure a commitment to health equity for minority communities.¹⁸

Specifically incorporating the concept of environmental justice (and involving a New Hampshire EJ community in such efforts), could enhance the effective implementation of this plan by ensuring a sharper focus on environmental determinants of health¹⁹ and, where pertinent, including important issues of justice both as a further impetus for needed change and as a means of engaging new stakeholders. Indeed, dialogue prompted by this environmental justice assessment has led to an interest on the part of stakeholders involved in the public health community to explore opportunities to inject EJ considerations into their current network and framing of issues. Dialogue prompted by this assessment also has led to the inclusion of environmental justice considerations in Manchester's soon-to-be-released Neighborhood Health Improvement Strategy – a bold initiative to address the many significant challenges facing urban neighborhoods in Manchester.

Doubtless, there are opportunities to inject environmental justice considerations into other work that already is underway. For example, EJ considerations could be part of the work of Transport New Hampshire (TNH), which is building a network to more effectively promote the development of a more balanced transportation system, including one with enhanced access and mobility options. Aligning environmental justice interests with TNH, and as part of TNH's network, would have a mutually beneficial impact both for EJ communities and the larger goal of a more balanced transportation system.

B. Advocating for needed data and resources. It was noted by some stakeholders that New Hampshire has done a poor job collecting data that relate specifically to minority populations, including health issues and exposures faced by minorities in the state. The above-referenced Occupational Health Surveillance Immigrant Survey Report (Feb. 2013), *see* footnote 15, confirms this point, stating that despite New Hampshire's growing minority population, "our public health data systems do not yet accurately collect race, ethnicity or language information. This system failure limits the ability of practitioners and researchers to identify, evaluate, and address health disparities in New Hampshire."

¹⁸ PLAN TO ADDRESS HEALTH DISPARITIES AND PROMOTE HEALTH EQUITY IN NEW HAMPSHIRE (available at <http://www.dhhs.state.nh.us/omh/documents/disparities.pdf>), prep'd for N.H. Health & Equity Partnership (March 2011) at 22.

¹⁹ While acknowledging environmental factors, the Plan and corresponding HEALTH AND EQUITY IN NEW HAMPSHIRE: 2013 REPORT CARD do not address specific environmental determinants of health, such as lead poisoning. (Compare with the presumably well-resourced NATIONAL STAKEHOLDER STRATEGY FOR ACHIEVING HEALTH EQUITY (available at <http://minorityhealth.hhs.gov/npa/templates/content.aspx?v=1&vlid=33&ID=286>), which specifically and explicitly discusses environmental determinants of health, such as lead exposure, asthma triggers, workplace safety and polluted living conditions).

It also was noted that spatial analyses of certain commercial and industrial activities in proximity to residential neighborhoods, including the storage and transport of chemicals, as well as epidemiological resources, are needed to assess the extent to which such activities are determinants of poor health. At the October 28 stakeholder meeting, it was suggested that a data comparison of funding for EJ-related work in other states, as compared to New Hampshire, would be helpful. It was noted, for example, that whereas Manchester's Healthy Homes program has uncertain long-term funding and is *reactive*, New York City has a *proactive* programmatic approach. A robust EJ community, working in concert with the public health community, could help advocate for investments in needed data and resources to enable a better understanding of the key issues and policy needs.

- C. Eliminating harmful household toxic exposures.** As previously discussed, there is concern that certain populations, including people facing the problem of bed bugs, are unnecessarily exposing themselves to harmful toxic chemicals. This is an issue likely warranting action, such as the education initiative the City of Nashua intends to launch. An organized EJ community may identify this issue as one worthy of broader coordination, with potential solutions including training and certification for pest management companies, as well as close scrutiny of Department of Agriculture exemptions relative to the use of chemicals.
- D. Building and enhancing grassroots / community organizing capacity.** Stakeholder interviews evidenced a need for greater capacity at the local, community level, including the need for grassroots engagement. They also evidenced a need for improved coordination between state-level organizations and community groups, including the need for local concerns to “bubble up” and help shape the agendas of statewide organizations. An organized EJ community could lead to greater, more strategic coordination of efforts among groups and potentially to strategies to better engage affected individuals in key policy initiatives, including legislation. With respect to the latter, an exciting new initiative recently launched by Families In Transition, called *Granite Leaders*, is training fifteen homeless or formerly-homeless individuals in how to participate in critical policy issues related to homelessness. This initiative, the first of its type in the United States, could provide a useful model for engaging more people who are directly affected by, and personally experiencing, environmental justice issues.
- E. Assessing the extent to which existing laws are not being properly implemented or enforced.** Two participants at the October 28 stakeholder meeting suggested that an assessment of existing laws, including mechanisms for oversight of enforcement, may be worthwhile.

Recommendation No. 3: Update and Enhance the State's Environmental Equity Policy and Permitting Processes

NHDES's Environmental Equity Policy, the first such state policy in the nation, should be updated and improved in a number of ways. Such updates and improvements should include, at a minimum, the adoption of "environmental justice" language, to more closely align the policy with EJ considerations that have been adopted elsewhere; expansion of the policy beyond NHDES, so that it is applied to the work of other relevant state agencies, such as the N.H. Department of Transportation and the Office of Energy and Planning, and potentially the Department of Resources and Economic Development; and two-way linkages between the policy and applicable regulations and decision-making processes, to ensure that EJ considerations have a substantive impact on permitting and other regulatory decisions. Importantly, these efforts should not be done only by NHDES or other state agency officials. Rather, they should be undertaken with input from individuals and entities involved in EJ-related issues in New Hampshire. Indeed, these efforts could serve as a useful opportunity either to build, or benefit from the building of, a robust EJ community (*see* Recommendation No. 2, above).

In addition to addressing NHDES's Environmental Equity Policy, there should be an assessment of whether, similar to the facilities siting process conducted by the Site Evaluation Committee, the NHDES permitting process for certain types of facilities should include counsel to represent the interests of the public. This type of public-counsel model could be an important way to allow meaningful public involvement in permit proceedings that can be highly technical and often beyond the financial resources of affected citizens. There also should be an effort to closely examine the manner in which NHDES's appeal councils have been applying the legal doctrine of standing, with reforms, if necessary, to ensure that affected citizens are not precluded from participating in permit appeals. Finally, to protect the rights of citizens to participate in public processes without threats of intimidation, New Hampshire would benefit from the enactment of legislation to penalize and discourage the use of strategic-litigation-against-public-process lawsuits, or so-called "SLAPP" suits. Although the New Hampshire Supreme Court opined that 1994 anti-SLAPP legislation was unconstitutional because it infringed upon the constitutional right to a jury,²⁰ there is likely a constitutionally sound approach to discouraging lawsuits that are intended to intimidate people from participating in public processes.

²⁰ *Opinion of the Justices (SLAPP Suit Procedure)*, 138 NH 445 (1994).