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Alma L. Lowry  
*Syracuse University*

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## **Abstract**

Public participation is at the heart of democracy and of the environmental justice movement. Most state-level environmental justice policies and regulations focus on improving public participation within administrative processes to ensure that communities have a voice in the environmental decisions that affect them. New York has adopted an environmental justice policy that follows this model and requires enhanced notice, accessible comment opportunities, and improved access to technical information for new major environmental permits issued to facilities proposed in low-income or minority communities. However, New York's policy, like other state participation-focused environmental justice policies, has yet to be evaluated. This work addresses that gap.

To do so, I develop six theoretically-tethered criteria of effective public participation (access, fair process, voice, dialogue, recognition, and legitimacy) through a review of the literature on relevant democracy and justice theory, particularly procedural justice and justice as recognition; the role of the administrative state, and the theory and history of environmental justice. I then refine and ground those measures through interviews with community activists, environmental justice advocates and regulatory agency staff and apply the grounded measures in a comparative case study of permitting processes that did or did not trigger New York's environmental justice policy. The data, collected through participant interviews, document review, and survey work and analyzed qualitatively, suggest that New York's policy improves the external framework for participation with marked improvements in objective measures of access and, to a lesser extent, social recognition. The policy creates the space for improvements in voice, dialogue, and institutional recognition, but does not ensure the internal changes to the decision-making structure necessary to guarantee these improvements. Organizational culture of

the applicant and/or agency, community identity and composition, source and content of notice, and public meeting structure may also have significant impacts on the effectiveness of public participation and merit further investigation.

**Achieving Justice through Public Participation:**

Measuring the Effectiveness of New York State's Enhanced Public Participation Policy for  
Environmental Justice Communities

by  
Alma L. Lowry

B.S., Nebraska Wesleyan University, 1987  
J.D., University of Michigan, 1995  
M.S., University of Michigan, 1996  
L.L.M., Georgetown University School of Law, 1998

Dissertation  
Submitted in Partial Fulfillment of the requirements for the degree of  
Doctor of Philosophy in Social Science

Syracuse University  
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## **Chapter 1: Introduction**

Public participation is at the heart of democracy. In classic terms, democracy was synonymous with direct participation (Dahl, 1989). More minimal versions of democracy that arose as states grew larger and direct participation more difficult simply required governments to be routinely responsive to citizen preferences (Mueller, 1992; Dahl, 1971) and citizens to participate sufficiently to express those preferences. Between these extremes, multiple theories of participatory democracy arose, each emphasizing different models of and goals for citizen engagement. Recently, public participation has been touted as key to redressing social justice issues, including environmental justice. Because environmental justice issues can involve highly technical problems and affect traditionally disempowered communities, citizen engagement may have different goals and require different structures than more traditional models.

Environmental justice refers to the disproportionate distribution of environmental hazards within low-income communities and communities of color. These communities are often politically vulnerable, populated by disempowered populations who are rendered invisible or mute within standard decision-making structures. As the issue of environmental justice has gained recognition in legislatures and administrative agencies across the country, many states have adopted policies or regulations to address the issue. Many of these policies focus on expanding or improving public participation in ways that ensure environmental justice communities are seen and heard in environmental decisions that affect them. Evaluating the effectiveness of public participation provided in this context requires an understanding of both their broad theoretical and more refined community- or issue-specific policy goals. Standard evaluation metrics may be inadequate for this purpose.

Historically, metrics for evaluating the effectiveness of public participation have been drawn from the experiences of experts and academics. Even where these metrics are defined in

terms of broader social goals, the relationship between the specific measures and fundamental notions of justice or democracy are not explained. However, ideal forms of public participation vary under different models of democracy and with respect to different justice goals. Measures of effectiveness that are explicitly linked to particular justice or democracy goals are critical to understanding and evaluating how well a particular policy furthers a specific model of democracy or form of justice. Such tethered measures could also be helpful in understanding whether a particular policy is actually drafted to promote goals stated in these terms. Through this research, I will develop such theoretically-tethered measures and employ them to evaluate the potential for public participation policies to redress environmental justice concerns.

### **I. The Role of Public Participation in Democracy Theory, Social Movements and the Environmental Justice Movement**

Democracy, and by extension public participation, is valued in large part because of its expected results. In contemporary theory, democracy is prized as most likely to produce decisions that are “consistent with principles of liberty and equality,” or are just, fair, and recognized as legitimate by the affected public (Urbinati, 2009, p. 57). The broader participation allowed under democratic governments, by definition, supports certain liberal freedoms, such as the right to form political organizations, hear and express perspectives opposed to the government line, and vote on certain policy or leadership matters (Dahl, 1971). Democratic processes provide an opportunity to change the composition of leadership to reflect the interests and experiences of previously unrepresented groups (Dahl, 1971). Alternatively, current decision-makers may be forced to change positions or policies in response to political mobilization within a defined group or community. Thus, participatory democracy can increase the influence of the traditionally disempowered. Formal public participation structures, while not

absolutely necessary, can facilitate such mobilization. For these reasons, efforts to further democratic governance often rely on formal public participation strategies.

The appropriate scope of public participation in reaching this result is not fixed. Some theorists are satisfied with minimal participation focused on selecting or ejecting executives and legislative leaders in elections based on the elected leaders' actual or projected responsiveness to the needs and preferences of the voting public (Boix, 2003; Przeworski, Alvarez, Cheibub and Limongi, 2000). In fact, wide-spread direct participation in governance is viewed as unnecessary and potentially counterproductive by some (Mueller, 1992; Schumpeter, 1950). Others argue for a far more engaged citizenry, who either participate directly in decision-making (Fung, 2004; Barber, 1984) or engage more deeply in the development of policy through deliberation (Gutmann and Thompson, 1996; Habermas, 1984, 1998).

The debate about public involvement has become more pronounced as administrative agencies take on a more active role in program management and policy development. Although participation must go beyond periodic voting to ensure responsiveness of unelected agency staff, the appropriate scope and goal is as unsettled here as in the broader theoretical debates. In some contexts, particularly those related to complex or technical issues, public participation may be structured to simply provide members of the public with a forum to state existing preferences and to ensure that experts know and consider relevant facts, leading to qualitatively sound decisions (Fischer, 2000; Williams and Matheny, 1995; Dryzek, 1990). Alternatively, public involvement may be viewed as a way to develop policies directly by educating citizens on the issue, uncovering shared interests or goals, and developing consensus around shared solutions (Dryzek, 2000; Gutmann and Thompson, 1996). On another level, public participation is valued because it prepares citizens to be effective decision-makers, educating them about and increasing

understanding across diverse groups and enhancing such citizenship skills as deliberation and problem solving (Sandel, 1996; Young, 1990; Barber, 1984).

Participatory decision-making, especially at the local level, has been and remains central to many social justice movements. Activists recognize that the formal equality created through public participation processes can provide disempowered groups the space to raise previously unheard concerns or conditions of injustice (Young, 2000; Gaventa, 2004; Gutmann and Thompson, 1996). Citizen engagement was central to the environmental movement in the 1970s, which saw direct involvement of citizen stakeholders as key to injecting public values into technical decisions and protecting communities from domination by more organized and politically savvy industry representatives (Williams and Matheny, 1995). For similar reasons, the environmental justice movement, which seeks to redress racially and economically disproportionate allocations of environmental burdens, has embraced democratic decision-making and full and meaningful participation by communities in the environmental decisions that affect them (Principles of Environmental Justice, 1991; Schlosberg, 2007).

Many of the policies developed to address environmental justice concerns are aimed at expanding and improving public participation in decision-making. Proponents argue that meaningful and effective participation is key to achieving just or right results. A majority of environmental justice policies adopted at the state and local level focus on expanding or enhancing existing participation opportunities to create such meaningful involvement (Bonorris, Jung, Targ, Wilson & Pair, 2010). However, as with broader democracy theory, the term “meaningful participation” remains largely undefined in environmental justice theory, within the movement and in the responsive policies.

## II. Measuring the Effectiveness of Public Participation

The varying ideals about the role of public participation and its relationship to foundational ideals of justice and democracy described above create the potential for widely divergent expectations of public processes. These varying expectations and the often unstated policy goals in participation-focused regulation complicate efforts to evaluate the effectiveness of public participation methods.

To date, most evaluation efforts have relied on measures derived from expert opinions on what should make participation effective or outcome-based social goals untethered to underlying democracy and justice goals. Many prior studies of public participation relied on structural measures presumed to increase effectiveness, such as early participation opportunities, without considering their relationship to desired outcomes (*see, e.g.*, Berry, Portney, Bablitch, and Mahoney, 1997). Others used outcome-based measures focused on whether participants were able to influence the policy to produce a desired result (Simrell King, Feltey, and O’Neill, 1998) or tied to social or policy goals derived from popular wisdom or the researcher’s own understanding of “good public participation” (Webler, Katenholz, and Renn, 1995; Beierle and Cayford, 2002). Evaluations were rarely tied to the explicit goals of the policy being evaluated or the implicit goals of the underlying democracy or justice theories.

Regardless of their basis, these measures were then applied to a range of public participation processes without regard for the policy goals of the underlying statute, the issues being considered, or the community involved. However, the justice goals of various democratic or social justice theories are not identical and, even when they are shared, may not be identically weighted. Moreover, communities that are differently situated may approach public processes with different expectations and needs. Thus, public participation methods may be deemed

effective without recognizing that they were only effective for some purposes or failed to meet expectations of certain stakeholders. Further, without a clear understanding of the link between effectiveness measures and underlying justice or democracy goals, it is difficult to assess where any perceived failure in the system lies. Public participation measures might be judged ineffective in some cases, even when the regulatory agencies are adequately responsive and the processes are properly inclusive, because the decision-making process or the mandated scope of review are too narrow or inflexible. The theoretically-tethered measures of effectiveness developed in this research will allow more targeted assessment of participatory processes.

Specifically, this research addresses two primary questions:

- (1) Can expanded public participation, focused on structural changes such as improved notice, accessibility of hearings and access to information, increase effectiveness of public participation overall or with respect to specific justice goals?
- (2) In particular, can expanded public participation as described above increase the effectiveness of public participation with respect to environmental justice goals?

### **III. Designing the Research**

To address these fundamental questions regarding public participation, this research focuses on an environmental justice policy adopted by New York State's Department of Environmental Conservation in 2003. This policy, known as CP-29 or New York State's Environmental Justice (EJ) policy, mandates enhanced notice, accessible comment opportunities, and improved access to related technical information for new major permits issued to polluting or hazardous facilities proposed in low-income or minority communities. It is grounded in both fundamental democracy theory, which justifies public participation broadly, and in environmental justice theory specifically. The policy only addresses participation norms and not

applicable permitting criteria. My research is focused on the effectiveness of this policy, as defined by my own criteria.

Relying on both theoretical literature and qualitative research, I derive effectiveness criteria and measures that are tied to underlying justice goals, compatible with the policy itself, and accepted by the affected stakeholder groups. In preliminary research, I explore the situated understanding of effective public participation and its related justice goals within the community of environmental justice advocates and community activists most likely to be routinely engaged in public processes and to be affected by the policy under review in this case. Using a comparative case study strategy, I apply those grounded measures to investigate whether the enhanced public participation methods provided under New York's EJ policy are more effective than standard participation processes overall or create targeted increases in effectiveness for defined criteria, specific policy rationales or related justice goals. In particular, I assess whether New York's EJ policy increases the effectiveness of public participation in terms of the justice goals of the environmental justice movement. Finally, I consider the extent to which any measured shortcomings can be addressed under the existing regulatory process and substantive permitting criteria.

#### **IV. Gauging the Significance of the Research**

This research is significant for four primary reasons. First, the work provides a theoretical underpinning for the effectiveness measures used in other studies of public participation measures. I evaluate New York's Environmental Justice (EJ) Policy in relation to three specific justice goals derived from democracy and environmental justice theory – distributive justice, procedural justice, and justice as the recognition of individual and group difference and autonomy (justice as recognition) – and the policy goal of increased legitimacy of the process

and outcome. The theoretically-grounded measures developed through this research will allow a more refined analysis of the effectiveness of specific participation methods based on underlying policy goals and target community and a more explicit mapping of particular participation methods to specific policy goals.

Second, this research provides insight on a dominant policy response to environmental justice concerns. New York is not alone in focusing its environmental justice policy on changes to the public review process. Of the 32 states that have adopted formal or informal environmental justice policies, a majority (17 states) have either expanded public participation opportunities or mandated consideration of environmental justice issues in their existing processes (Bonorris *et al.*, 2010). Many environmental justice activists seem to share this emphasis, as evidenced by the National Environmental Justice Advisory Committee's Model Plan for Public Participation (NEJAC, 2000a). However, most environmental justice research has been focused on whether the perceived imbalance of environmental hazard is real and how it arises. To date, there has been little if any research on the effectiveness of specific environmental justice policies or even what environmental justice communities mean by "effective" public participation. This research helps to clarify the underlying goals of the movement and to evaluate this wide-spread policy response to environmental justice.

Third, by focusing on low-income and minority communities, the research addresses the frequently voiced but largely unevaluated concern among both academics and participation practitioners that public participation is less effective in such communities. Such concerns are particularly strong for issues that are perceived to be complex or technical, such as environmental issues (Corburn, 2005; Fischer, 2000). Through its Environmental Justice Policy, New York State has tried to remedy many of the structural issues that prior scholars have

identified as creating barriers to the participation of low-income and minority community members in administrative decision-making processes, specifically with respect to notice and access, although less attention is paid to overcoming problems of expertise and forms of knowledge. This study will provide some insight into the validity of these structural concerns and the effectiveness of New York's chosen remedies, particularly in drawing a more diverse range of participants into the permitting process.

Fourth, the work will consider the effectiveness of less intensive public participation methods, such as public hearings or public meetings, which have largely been ignored in previous studies. Most earlier studies focused on intensive and long-term processes such as citizen advisory committees or regulatory negotiations, which were viewed as innovative and as potentially more effective than traditional public hearings. Despite their neglect by researchers, the vast majority of participation opportunities at the local and national level are more comparable to the public hearing process affected by New York's EJ policy, where administrative agencies are simply required to give the interested public an opportunity to voice their opinions and concerns, than to more formal consultations. Further, the enhanced public participation methods required under CP-29, if effective, could be easily adopted in other contexts and jurisdictions, because they rely on modifications to these standard participation methods rather than adoption of more time and resource intensive measures.

## **V. Conclusion**

If public participation is at the heart of democracy, much of the recent research on community engagement suggests that our form of government is at risk (Putnam, 1993, 1995; Skocpol, 1999). Those citizens that remain active tend to be wealthy, well-educated and of the

dominant race or ethnicity (Verba, Schlozman and Brady, 1995). Poor, minority communities are often deterred from political participation by time and financial constraints or by the difficulty of navigating formal legal processes or understanding technical information (Cole and Foster, 2001). These disempowered communities may suffer the greatest harm from retrenchments in democratic development and may benefit the most from expansions in public participation opportunities. The diversity of opinion regarding the appropriate structure and scope of participation make diagnosing the problem and evaluating potential solutions difficult. This research takes the first step toward developing a structured set of measures and assessing the effectiveness of specific participation processes in creating just and legitimate policies.

## **Chapter 2: The Evolution of Public Participation in Democracy, the Administrative State and the Environmental Justice Movement**

At its birth, democracy was a deeply participatory process. In the ancient Greek city-state which is the foundation of modern democracy, governance required the consent or agreement of the citizenry, which was understood to mean direct participation and consensus of the voting citizens (Arendt, 1958). Some theorists have argued that too much citizen participation in government may be dangerous or simply ineffective (e.g., Schumpeter, 1950), but public participation remains a central tenet of modern democracy in the United States. Although the scope and structure has evolved over time, some form of citizen participation is incorporated into decision-making at almost every level of government and public participation has been adopted as a rallying cry by a wide range of social justice movements, including the environmental justice movement.

This broad support is underpinned by claims that public participation will equalize access to and balance interests within pluralist or legislative governance models, will enhance previously underrepresented voices within deliberative governance models, and will improve the accuracy, efficiency, and legitimacy of decisions reached at the agency level. Social activists look to public participation to amplify community voice; empower minority, low-income or other excluded communities; and ensure more just results. Understanding this strong and diverse support requires an understanding of public participation in democracy and justice theory, as well as its role in the American administrative state, in social justice movements, and in the environmental justice movement in particular. That background will clarify expectations for public participation and help develop the measures needed to determine whether enhanced public

participation has been effective in the specific context of this study or could be effective in the environmental justice context in general.

## **I. The Role of Public Participation in Democratic States**

As noted in the Introduction, public participation in some form is fundamental to democracy (Fenn, 2008; Dahl, 1971, 1989; Bachrach and Botwinick, 1971; Barber, 1984). At the most basic level, democracy is a contract between a government and its citizens and government authority stems from the actual or tacit consent of the governed (Barber, 1984). Non-democratic states defined by shared identities or ideologies can base policy on universally accepted cosmologies, religions, or other “teachable knowledge of an ordered world” (Habermas, 1979, p. 185) without the need for formal expressions of consent. As societies diversify and liberal notions of individualism spread, legal frameworks established through actual public consent and on-going direct participation replace these universal principles (Habermas, 1975, 1979).

The scope and method of public participation or citizen engagement has varied widely depending on the size and homogeneity of the state, the locus of decision-making, the normative model of democracy adopted, the perception of the individual, and other social norms. “Democracy” can describe a wide range of political systems (Dahl, 1971) and has been the subject of multiple normative theories with slightly different expectations for public engagement. For purposes of this study, which looks at public participation in environmental decision-making at the administrative level, theories of participatory liberal democracy advanced through pluralistic structures and deliberative democracy advanced through the involvement of affected individuals are most relevant.

## A. Liberal Models of Democracy

Liberal models of democracy, participatory or otherwise, are primarily focused on protecting an individual's basic rights from infringement by the government or other individuals (Barber, 1984) and flow from the idea that all individuals are of equal value and are best equipped to determine their own self-interest and conception of "the good" (Young, 1990; Rawls, 1971). Just as each individual is of equal value, each individual conception of "the good" is of equal value (Verba *et al.*, 1995). Under this model of democracy, there is no single, objectively determinable public interest (Dahl, 1989; Young 2000; Williams and Matheny, 1995). Rather, the "public interest" is determined by summing the interests of each individual affected by the decision (Beierle and Cayford, 2002), which are self-defined outside of and prior to the political process (Dryzek, 2000). Government decisions are legitimate and just to the extent that they respond to citizen preferences (Dahl, 1971, 1989; Young 2000; Williams and Matheny, 1995) or "reflect[] the aggregation of the strongest or most widely held preferences in the population" (Young, 2000, p. 19; *see also* Coglianesi, 2003), tempered by statutory and constitutional requirements. Government is "not...a source of objective decision-making in the public interest but [an] arbiter[] among different interests within the public" (Beierle and Cayford, 2002, p. 3).

Participants are expected to represent only their own interests or the common concerns of voluntarily formed interest groups or socially defined status groups (Dahl, 1989; Young, 2000; Holden, 1988). The rights of a community or socially defined group are recognized through the individual rights and interests of community members (Kymlicka, 1989). Although participants may be expected to frame public arguments in terms of common interests for strategic purposes, they remain free to adopt positions suggested by privately held moral beliefs and individual

interests (Rawls, 1993). Because an individual's interests are not guaranteed to be represented without direct involvement in the decision-making process, liberal democracy models can be deeply participatory.

The traditional liberal model of democracy does not aim for a particular result. In the acknowledged absence of a single, definable public interest against which to test outcomes and the possibility of any individual finding him or herself in the minority on a particular issue, rational individuals are motivated to create and participate in just structures or procedures (Rawls, 1971; Barber, 1984). Without external, independently defined criteria for judging the rightness or justice of a particular result, procedures are designed to maximize the likelihood of a just result and compliance with the process itself defines what is or is not just. This is pure procedural justice, as defined by Rawls (1971). Minimally, participatory processes must allow citizens to raise concerns; state their interests; place issues on the agenda; and learn about, express views on, and vote on or help to decide issues that concern them (Dahl, 1971; Gastil, 2008). By formalizing access to decision-makers, participatory processes provide affected parties with equal "participatory rights" and ostensibly ensure that they can protect their own interests (Verba *et al.*, 1995). Meaningful public participation methods provide these opportunities and ensure that government decisions are perceived to be and are legitimate or just (Habermas, 1979; Webler *et al.*, 1995).

Despite recognizing the centrality of individual choice, many contemporary democrats are deeply concerned with injecting elements of rationality into public decision-making (Urbinati, 2010; Yankelovich, 1991; Rawls, 1971). Rawls (1971), for example, emphasizes that citizens should be able to justify their views by "appeal[ing] to principles that others can accept" (p. 206). Yankelovich (1991) argues that citizens should rely on public judgment, which

incorporates recognition and acceptance of the consequences of positions taken. These theorists emphasize responsible and rationally supportable justifications offered within a defined decision-making framework but are not committed to a search for common interest or to public discussion, placing them somewhere between pure liberal democracy and a fully deliberative model.

## **B. Deliberative Democracy Models**

The deliberative democracy paradigm envisions public participation as a means to “identify the common good and...shared communal (versus individual) goals” (Beierle and Cayford, 2002, p. 4) through public-spirited debate that ensures a rough balance of power between parties (Layzer, 2002). Advocates of deliberative democracy critique pluralistic decision-making as the explicitly self-interested compromise of affected interest groups and assert that such decisions can only be considered legitimate if there is a sufficient balance of power between the participants to allow for meaningful negotiations (Habermas, 1975). Further, because pluralist politics do not encourage “normative inquiry and commitment” (Young, 1990, p. 77), such decisions cannot claim an immanent relation to justice.

Under deliberative democracy, public participation is geared toward promoting dialogue that allows an enlightened citizenry to discover a common public interest (Williams and Matheny, 1995; Young, 1990) or persuade each other of the justness or correctness of a particular decision. Deliberative democracy relies on three procedural norms:

- (1) **Publicity:** discussions must be open to all interested parties (Gutmann and Thompson, 1996).

- (2) Reciprocity: participants are expected to justify their positions using rationales that are or could be universally shared (Gutmann and Thompson, 1996; Young, 1990; Habermas, 1975) and must be open to similar rationales offered by others (Barber, 1984; Rawls, 1993; Gutmann & Thompson, 1996).
- (3) Accountability: participants must be responsible to each other for the decisions taken (Gutmann and Thompson, 1996).

Citizen-participants are expected to focus on the rightness or justice of their positions (Young, 1990), rather than engaging in simple horse-trading or log-rolling. Further, they should present concerns and positions in publicly cognizable terms and values rather than wholly personal self-interest or beliefs or unique, experientially-defined individual values and perspectives (Habermas, 1975; Rawls, 1993).

Public participation in this context is not simply a way to find shared interests or a popular result, but to identify the public good (Barber, 1984; Gauna, 1998; Beierle and Cayford, 2002). Even if consensus is not reached, the process may uncover fundamental interests not reflected in individual positions (Gutmann and Thompson, 1996; Sandel, 1984). By listening deeply, testing ideas through public deliberation and relying on the best public reasons revealed in this dialogue, advocates of deliberative democracy believe that decision-makers can craft just and legitimate policy (Gutmann and Thompson, 1996).

Democratic processes are also important in the administrative context, which is the focus of this research and is defined as “direct [public] involvement in executive functions that...are traditionally delegated to administrative agencies” through formal mechanisms that go beyond voting or lobbying (Dietz and Stern, 2008, pp. 11-12). Like other governance structures in the United States, administrative processes were not explicitly designed to follow either a

participatory liberal democracy or a deliberative democracy model. Instead, individual public participation processes were designed to meet immediate needs and were influenced by the democracy theories and participation models in vogue at the time. In addition, public participation in the administrative context has been significantly amended over time in response to the changing roles of administrative agencies, the priorities and concerns of reform movements, and the demands of the public. Understanding the relationship between the public participation structures within the administrative processes that are the subject of this research and the underlying democratic theory, therefore, requires at least a brief examination of the evolution of public participation within the administrative state.

## **II. The Development of Public Participation Norms in the Administrative State**

The administrative state was originally envisioned as secondary to governance. Administrative agencies were intended to simply execute policy decisions made by the legislative branch and chief executive. Public involvement with administrative agencies was generally limited, clerical, and individual. However, administrative agencies have assumed an increasing amount of responsibility for policy making and other decisions that have an immediate impact on the general population. Beginning in the early 1900s and accelerating after the New Deal, as government became increasingly involved in complex programs of wide applicability, such as environmental management, administrative agencies grew more numerous, larger, and more active to keep pace with the regulatory demands being made (Beierle and Cayford, 2002; Beierle and Konisky, 2000; Sheperd, 1996). Accordingly, citizen participation in administrative decision-making has become increasingly important and widespread.

Administrative agencies, as unelected bodies, are not directly accountable to the public and are still largely defined as the executors of policy decisions made by the duly elected

legislative branch. However, with the expanding scope of government, legislative bodies found themselves acting on issues like environmental management that required technical, detailed, and site- or condition-specific decisions. Unable or unwilling to make these complex and often controversial choices, legislators instead tasked administrative agencies with “technical” decisions that had broad policy implications (Williams and Matheny, 1995). For example, under the 1972 amendments to the Federal Insecticide, Fungicide, Rodenticide Act of 1947, the Environmental Protection Agency (EPA) is charged with managing a registration and labeling program for pesticides. As part of the registration process, the EPA must ensure that no registered pesticide, used properly, will have unreasonable adverse environmental effects, defined as an “unreasonable risk to man or the environment, taking into account economic, social and environmental costs and benefits” (FIFRA, 1947, codified at 7 U.S.C. § 136(bb)). Thus, the apparently ministerial task of pesticide registration incorporates technical and subjective decisions regarding how much environmental and human risk is permissible from a particular pesticide, given its economic and other social benefits.

Faced with such value-laden and open-ended tasks, administrative agencies tend to look for the public interest using one of three models: the progressive or managerial model of expert knowledge, the pluralist model of interest group balancing, and the communitarian model of engaged citizen-expert deliberation (Williams and Matheny, 1995). While the progressive model relies on structural notions of legitimacy, the pluralist and communitarian norms uses public participation to provide the consent necessary for legitimacy (Barber, 1984).

#### **A. The Progressive or Managerial Model**

The early move toward administrative decision-making was sparked by the progressive movement, which emphasized the role of scientific, rational decision-making in resolving

controversial issues (Williams and Matheny, 1995). Inspired by the use of science in rationalizing and organizing the American economy in the early 1900s and by the technological advances of the day, Progressives relied on expertise as a substitute for and barrier to participation (Williams and Matheny, 1995). The earliest administrative agencies were essentially technocracies and staff operated as technical managers and experts (Beierle and Cayford, 2002).

Participation is minimized in the structural models that dominate this managerial paradigm. Agency staff rely on their perceived objectivity as scientific or technical experts and on broad acceptance of established decision-making structures to legitimate their policy decisions and interpretations of the public interest (Habermas, 1975, 1979). Although these choices are limited by statute and accepted scientific facts, such top-down decision-making is decoupled from direct public input to or immediate consequences for the administrative decision-makers (Emerson, Nabatchi, O'Leary, and Stephens, 2003; Gauna, 1998). For the progressive movement, this separation is positive, allowing policy-makers to “transcend the narrow, suspect self-interest” of the affected public and the regulated community (Williams and Matheny, 1995). To the extent that public participation is allowed, its focus is on bringing full data into the process and educating the public about the agency's decisions. Agencies operating under this paradigm presume that if the public could only understand the situation, they would accept the rational and technically competent agency action. The aim is a form of distributive justice with fair results defined by substantive decision rules incorporated in the authorizing statute.

By the time of the New Deal, however, agencies had demonstrated the problems of such non-transparent and unaccountable processes, acting to shore up their own authority or to provide benefits to particular constituencies to the detriment of the public as a whole (Dietz and

Stern, 2008). The legitimizing force of these structural norms, as well as the underlying premises of neutrality and rationality, were questioned (*see e.g.*, Dietz and Stern, 2008; Schlozman and Tierney, 1986). Administrative processes were amended to recognize the inherently political nature of administrative decision-making and provide formal opportunities for citizen engagement in the process, leading to the rise of the pluralist model of public administration.

## **B. The Pluralist Model**

Unlike the progressive model that tries to protect administrators from influence by self-interested groups and envisions agencies as an unbiased expert, the pluralist model views such self-interest as unavoidable and agency bias as a likely danger to guard against. As a result, the pluralist model seeks to allow “organized interests equal opportunity to influence the process” (Williams and Matheny, 1995, p. 20) and to open agency decision-making to public scrutiny to avoid potential hidden biases.

Congress initiated the move toward the pluralist model through the enactment of the Administrative Procedure Act (APA) of 1946. The APA is designed to regularize information inputs to the agency, ensure greater transparency in agency decision-making, and increase agency accountability for decisions (Dietz and Stern, 2008). These goals are accomplished through minimum participation standards for major agency decisions; requirements that agencies provide notice, allow for and consider public comment on the proposed policy; and a requirement that agencies provide a basis or rationale for the final decision that is based on the record developed in the public process (APA, 1946, codified at 5 U.S.C. §§ 553 *et seq.*). However, the agency retains its role as technical expert and final decision-maker.

The recommitment to public engagement in administrative decision-making reflected in the APA can be seen in the environmental context in particular. Formal public participation opportunities have been incorporated into all federal and most state environmental laws enacted in the past 40 years. By 1980, 80% of all federal programs required public participation in permitting, grant-making and other decisions (Dietz and Stern, 2008). Although the APA does not specify particular forms of notice or comment opportunities, the public participation requirements in most federal and state environmental laws involving discrete events, such as developing regulations or granting permits for polluting facilities, follow a common pattern. The affected public is given indirect notice of proposed government actions – through publication in a local newspaper, for example – and an opportunity to file written comments and perhaps to speak to the issue at a public meeting or hearing. The relevant agency must consider and respond to these comments, but need not incorporate suggested changes or actions. Instead, the final decision must be based on governing laws and the agency's own evaluation of what is required to comply with those laws. Judicial review focuses on whether meaningful participation was afforded, public concerns were considered, and the decision is justified based on the record developed and the underlying legal mandates.

The stated goal of pluralist administrative processes is to gather information about potential impacts and possible mitigation measures, reduce the perception of bias toward the regulated community or other special interests, and enhance public acceptance of the final decision (Dietz and Stern, 2008; Irvin and Stansbury, 2004; Abel and Stephen, 2000; Gauna, 1998). If the process is open and allows full participation, the presumption is that decision-makers will have sufficient information about the issue and public preferences to make a fair and legitimate decision (Williams and Matheny, 1995). Although the agency is expected to respond

to citizen preferences (Dahl, 1971, 1989; Young 2000; Williams and Matheny, 1995), it is not focused on simply balancing interests, but on furthering the public interest as determined by its expert assessment of the facts (Williams and Matheny, 1995) and on meeting statutory or regulatory standards for their decisions (Lazarus and Tai, 1999). This pluralistic model of administrative participation aims for procedural justice (Rawls, 1971), because it focuses on expanding access to the process and balancing multiple interests rather than finding the single correct or universally accepted decision (Beierle and Cayford, 2002; Williams and Matheny, 1995). However, there are also distributive justice goals reflected in the specific decision-making rules that must be applied.

Although the pluralist model remains the dominant form of administrative decision-making, it is vulnerable to some of the same concerns that have been leveled at participatory liberal democracy, including the failure of these processes to identify the best result, focusing instead on generating an acceptable compromise, and the problem of unequal access to or imbalance of power within the process, leaving some interests underrepresented. In response to these concerns, more deeply participatory models of administrative decision-making, such as the communitarian model, have been proposed.

### **C. The Communitarian Model**

The communitarian model, in its purest form, posits that an enlightened and engaged public can collectively define the public interest (Williams and Matheny, 1995). Public participation is designed to spark dialogue among affected parties who collaborate to develop an objectively sound solution that meets multiple interests (Beierle and Cayford, 2002). The role of the administrative agency under this model is to facilitate that discussion.

Although the APA had increased access to agency process, barriers to full public participation remained. The mass movements of the late 1960s and early 1970s, as well as concern about the disconnect between the “administrator as expert” model and democratic theories, shifted the emphasis to public input and control. The Community Action Program (CAP) of the Economic Opportunity Act of 1964 was one result (Berry, Portney and Thomsen, 1993). Under CAP, local communities were to develop long-range locally-based programs to reduce poverty (Levitan, 1969) with “the maximum feasible participation of residents of the areas and members of the groups served” (Berry *et al.*, 1993, pp. 22-23). This requirement was intended to recognize and privilege local knowledge of community needs (Berry *et al.*, 1993).<sup>1</sup> When CAP did not produce innovative and effective programs, the experiment was viewed as a failure and control returned to federal administrators (Berry *et al.*, 1993; Levitan, 1969). However, elements of the communitarian model continue to be used, particularly in the environmental context.

Typically, environmental agencies adopt more intensely participatory or communitarian models where projects involve long-term relationships between the agency and the community and have highly localized impacts (Beierle and Cayford, 2002; Gauna, 1998). Natural resource management plans and remediation plans for contaminated sites, for example, have frequently been made through the use of standing citizen advisory committees or negotiated rulemakings. Through repeated interactions with a limited number of affected parties and strong technical support, participants are expected to develop a shared understanding of the underlying issue and each other’s interests and to develop generally acceptable proposals for resolving the issue.

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<sup>1</sup> Interestingly, CAP did not define “community” either in terms of political or geographic boundaries; instead, it allowed affected parties to develop proposals for any geographic area without reference to local government (Levitan, 1969). While this maximized flexibility to respond to the reality of poverty on the ground, it also created significant opposition from local governments, who quickly recognized that they could be completely by-passed by the CAP process (Levitan, 1969).

Although the goal is to encourage dialogue and deliberation, discussion is not constrained by formal deliberative democracy requirements.

The ability of participants in such processes to force change or influence outcome varies. The public board or task force may be granted decision-making authority, although individual participants or groups of participants generally do not have veto authority (*see, e.g.,* Fung, 2004). More typically, these bodies are termed “advisory groups” and are simply charged with making recommendations for action with the administrative agency retaining final decision-making authority. Further, because legal and regulatory requirements for public participation are unchanged, these citizen boards or advisory groups often operate alongside the broad public comment opportunities required under the pluralist model.

Communitarian models of agency decision-making are aimed at enhancing both community voice and agency receptivity to that voice. For that reason, these measures may be most associated with furthering justice as recognition, meaning both an acknowledgment of the individuals or community affected by a particular decision and the validity of their participation and perspective and the potential to be moved or persuaded by that knowledge. Environmental permitting decisions affecting low-income or minority communities can be particularly contentious, in terms of the substantive result, the adequacy of public involvement in the process, and perceived or actual disrespect for or discrimination against the affected community. Dialogue- and relationship-based models such as those contemplated under the communitarian model of administrative decision-making are frequently invoked as appropriate methods to handle “wicked” or ill-defined and difficult to resolve issues, such as those raised by the environmental justice movement (Roberts, 2002; Fischer, 1993).

### **III. Environmental Justice and Public Participation**

The environmental justice movement was born from the recognition by communities of color and low-income communities that they shouldered an unequal share of the environmental harms and risks created by our industrialized society. By most accounts, the movement was sparked by the siting of a hazardous waste disposal site in a heavily African-American community, which fought back by arguing that this was part of a pattern in which white communities were spared the burden of environmentally hazardous facilities. The environmental justice movement arose to challenge this disparity. Many social justice movements have fought for an expanded public role in decisions that affect them and the environmental justice movement is no exception. However, the complex and intensely local issues at the heart of the movement may be particularly susceptible to a public participation-based response.

The dispute which raised public awareness of environmental injustice issue arose in North Carolina in 1982 when a truck driver illegally disposed of PCB-contaminated oil by opening the spigot on his tanker and drizzling the wastes over 210 miles of back roads across the State (Lee, 1992). The result was 60,000 tons of PCB-contaminated soils that the state had to manage (Bullard, 2004). Following a long review process, the state chose to build a hazardous waste facility for the soils in the predominantly African-American Warren County, bypassing alternative sites in communities with larger white populations (Bullard, 2004). Members of the proposed host community initially challenged this decision in conventional terms, arguing that the water table in the area was too high and that PCBs were liable to leach from the site (Bullard, 2004). After four years of struggle with unsatisfactory results, activists became convinced that their community had been chosen due to its demographics rather than its geology and argued publicly that richer, whiter communities would not be asked to accept such a facility.

The resulting protests attracted national support, including the direct support of Walter Fauntroy, the non-voting Congressional Representative from the District of Columbia. Delegate Fauntroy requested a Congressional investigation of the community's claim that hazardous waste facilities were inequitably distributed and the U.S. General Accounting Office undertook the first limited study of the issue, analyzing the location of hazardous waste facilities in four states in the south east (EPA Region 4). At around the same time, the United Church of Christ began a more ambitious national study about the siting of commercial hazardous waste facilities. Both studies, along with most of the regional and national studies that have been conducted since, found that communities of color and low-income communities were more likely to be exposed to environmental hazards than wealthier communities or those with smaller minority populations (U.S. GAO, 1983; United Church of Christ, 1987; Lester, Allen and Hill, 2001; Bullard, Saha, Mohai and Wright, 2007). (*But see* Boerner and Lambert, 1995; Lambert and Boerner, 1997).

In 1990, William Reilly, the EPA Administrator, met with a group of academics who had provided some of the earliest research on the disproportionate siting of environmental hazards in minority communities and, that same year, publicly recognized their work (Mohai and Bryant, 1992). Subsequently, Reilly established the Environmental Equity Working Group within EPA and held four meetings with leaders of the environmental justice movement to discuss the problem and the appropriate response by EPA (EJRC, 2002). As environmental justice activists gained the ear of policy makers, they began to recognize the need to create a shared vision of an environmentally just society.

Environmental justice groups were already collaborating on specific projects and developing regional networks to provide support (EJRC, 2002). In 1991, however, this regional networking went national and resulted in the First National People of Color Environmental

Leadership Conference. More than 650 grassroots activists and national leaders from across the country and the world gathered in Washington, D.C. and, over a four-day process of collaborative decision-making, collectively identified 17 Principles of Environmental Justice that provide some insight into the type of justice sought by the movement (Principles, 1991).<sup>2</sup> The Principles are framed in terms of specific outcomes rather than justice theories, but demonstrate a clear focus on communal rights to a clean and safe environment and access to and voice in environmental decision-making.<sup>3</sup>

The National Environmental Justice Advisory Committee (NEJAC) also underlined the importance of access to and meaningful voice within administrative decision-making when it issued its Model Plan for Public Participation (NEJAC, 2000a).<sup>4</sup> The Model Plan describes “core values and guiding principles” for public participation, which include the promise that the regulatory agency “seek[] out and facilitate[] the involvement” of affected parties, that people “have a say” in decisions that affect them, that public contributions “will influence the decision,” and that participants will learn “how their input was, or was not, used” (NEJAC, 2000a).

The federal government and many state governments have recognized the legitimacy of environmental justice concerns and, at minimum, the movement’s distributive and procedural justice goals. The U.S. EPA and the National Institute of Environmental Health Sciences, for example, have affirmed the right to safe, healthful and sustainable communities and to fair participation in decision-making (Kuehn, 2000). In 1994, then-President Clinton issued Executive Order 12,898 (E.O. 12898), instructing federal agencies to provide greater public

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<sup>2</sup> The Principles of Environmental Justice have been reprinted in many texts and are available on-line at <http://www.ejnet.org/ej/principles.html>.

<sup>3</sup> Four of the seventeen Principles focus on participation or self-determination: the demand that “public policy be based on mutual respect and justice for all peoples, free from discrimination” and “the right to participate as equal partners at every level of decision-making” as well as the affirmation that “the fundamental right to political, economic, cultural and environmental self-determination of all peoples” and that Native Peoples have a special legal status of sovereignty and self-determination. Five of the Principles affirm the right to be free from specific environmental hazards or to live in environmentally sound communities.

<sup>4</sup> The Model Plan is published by the U.S. Environmental Protection Agency and is available on-line at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/model-public-part-plan.pdf>.

participation opportunities and enhanced access to permit-related information for low-income and minority communities affected by federal permitting decisions (Kuehn, 2000). By 2010, New York and 31 other states had adopted formal or informal environmental justice policies (Bonorris *et al.*, 2010).

Most of these new state laws, regulations and policies focus on ensuring fair participation in decision-making (Bonorris *et al.*, 2010). However, this effort is framed in a variety of ways. Some states facilitate public access to the technical and spatial information necessary to evaluate environmental concerns, creating easily accessible information repositories such as on-line mapping databases to locate pollution sources, or focus on educating affected communities about the public participation process and how to become involved (Bonorris *et al.*, 2010). Others try to address identified logistical issues. For example, nine states (California, Connecticut, Illinois, Indiana, New Jersey, New Mexico, New York, Pennsylvania, and Tennessee) require public notices and key documents to be published in the language of the affected community or in lay-friendly language (Bonorris *et al.*, 2010). Five states (California, Connecticut, New York, Oregon, and Washington) regulate the time and place of public hearings (Bonorris *et al.*, 2010). Finally, thirteen states (Alabama, California, Connecticut, Illinois, Massachusetts, Nebraska, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Virginia and Washington) require expanded outreach, direct notice or additional opportunities for public engagement (Bonorris *et al.*, 2010). In contrast, only six states (Alabama, Arkansas, Georgia, Mississippi, Maryland and Massachusetts) include explicit changes to siting standards, such as anti-concentration rules or substantive to operating standards (Bonorris *et al.*, 2010). Because most state policies do not create substantive changes to siting laws, the presumption appears to be that environmental justice can be achieved through fair or open decision-making procedures.

New York's Environmental Justice Policy (Commissioner's Policy 29 or CP-29), which was adopted in 2003, is a good example of a procedurally-focused response. The EJ Policy adapts the standard notice and comment structure of the pluralist model, requiring permit applicants to implement an "enhanced public participation plan" as part of the permit review process for any major polluting facility proposed for an "environmental justice community." This term is defined to include any urban area with at least 51.1% minority residents, rural area with at least 33.3% minority residents or a community where at least 23.9% of the population falls below the poverty line (CP-29).

The policy implemented in New York draws on prior research about the barriers to and facilitators of participation. Inadequate notice, overly technical project information, one-way communication, and inaccessible meetings are seen as limiting effectiveness (Alberts, 2007; Laurian, 2004; Teske, 2000; Simrell King *et al.*, 1998, Checkoway, 1981). Ideal participation models would, at minimum, ensure participant representativeness, transparent decision-making structures, clear decision-making authority, and sound facilitation (Irvin and Stansbury, 2004) and would allow early participation, community input into all underlying issues, and real participant impact on the decision (Rowe and Frewer, 2000). The Model Plan for Public Participation and Public Participation Guidelines developed by the National Environmental Justice Advisory Committee similarly focus on early and culturally appropriate public outreach, direct notice to known community groups, translation of key project materials, and conveniently scheduled and located meetings, to enhance participant knowledge of and access to the decision-making process (NEJAC, 2000a, 2000b).

Under New York's EJ policy, permit applicants must actively identify and notify major stakeholders and affected parties in environmental justice communities, directly distribute

project information designed for readers without technical training, schedule multiple public information meetings at convenient times and locations throughout the permit review process, and make project-related documents accessible to stakeholders. Many of these structural changes, including early notice, accessible meetings and lay-friendly project information, are advocated in the Model Plan for Public Participation (NEJAC, 2000a). These changes also incorporate elements of both liberal and deliberative democracy. To date, their effectiveness has not been measured. However, existing measures or evaluation models may not be appropriate for environmental justice-specific policies or for assessing the specific democracy or justice goals of this policy.

#### **IV. Historic Measures of Effective Public Participation:**

Although there is no defined or dominant metric for effective public participation, prior studies of public participation have looked for specific structural or logistic elements widely presumed to be necessary for effective participation, assessed discrete markers of social goals, or evaluated the desirability of the outcome from the perspective of a particular affected party. In developing these measures of effectiveness, researchers are typically guided by their own framing of the purpose and benefits of public participation (*see, e.g., Berry et al., 1997*) or by the preferences of “experts” or repeat players (*see, e.g., Simrell King et al., 1998*). Many of these early studies evaluated whether factors or practices believed to lead to better results were present, such as participant representativeness, agency responsiveness, early participation, and face-to-face discussions (Beierle and Konisky, 2000; *Berry et al., 1997*);).

Other studies were outcome-focused, assessing whether participants were able to influence the process and final decision, meet their interests, and achieve results preferred by the

public (Beierle and Konisky, 2000; Simrell King *et al.*, 1998). Indirect measures of positive outcomes, such as increased interest in public affairs, willingness to participate in future decision-making processes, reduced public opposition to or increased public acceptance for the agency's preferred alternative and a perception that administrators actively listened to their concerns, were also used (Simrell King, 1998; Beierle and Konisky, 2000; McKinney, 2002). Self-reported participant satisfaction is one of the key outcome-focused measures used to evaluate the success of participation processes (Coglianese, 2003).

A third set of researchers proposed evaluation measures tied to broader social goals, such as community cohesion, individual learning and moral development. For example, Webler, Kastenholz and Renn (1995) proposed three measures for evaluating the success of public participation structures: competence of public input and final result, fairness of the process, and social learning. Their focus on social goals was adopted and expanded by Thomas Beierle in a series of studies conducted between 1999 and 2002. The effectiveness of public participation was evaluated alternatively in terms of three to five broad goals – incorporating public values into decisions, resolving conflict, restoring trust in government, improving the substantive quality of decisions and informing the public measured through expert assessment and participant self-reporting (Beierle, 1999; Beierle and Konisky, 2000; Beierle and Cayford, 2002).

Despite the development of detailed and multi-layered measures aimed at broad social goals, prior research did not explicitly consider the links between participation and fundamental theories of democracy or of justice. As discussed above, participatory democracy is valuable, in large part, because it furthers fundamental notions of justice (Urbino, 2010; Dietz and Stern, 2008). Effectiveness measures tethered to these underlying justice goals would allow a more

nuanced analysis of the relative contributions that specific public participation methods may make to achieving different underlying justice goals.

In addition, the measures used in prior studies do not appear to consider variances in the understanding of “effective public participation” as affected by social location or positionality of the various stakeholders. Social location refers to the position in society held by an individual or community and is affected by race, class, ethnicity, gender and similar factors (Taylor, 2000). The meaning accorded to particular events or interactions, the construction of grievances, and the available responses are all colored by social location (Taylor, 2000). The regulatory agency, the regulated industry, and the affected community may have very different perspectives on the underlying environmental justice concerns and the policy responses. Understanding these differences will be particularly important to constructing adequate measures of effectiveness for the public participation methods being studied.

## **V. Conclusion**

As suggested by the history provided above, effective public participation has emerged as an integral part of establishing appropriate and fair rules for social interactions. Public participation is a core element of the democratic theories that guided development of governing structures in the United States and is considered central to effective self-government. In particular, because the public does not directly elect and cannot directly oust agency staff, these self-government norms also require that citizens have access to and the ability to represent their interests within the administrative process to ensure that their interests are represented. However, this was not always the case.

Agencies were originally viewed as neutral experts to be shielded from external influences rather than political bodies that should be guided by the preferences of their

constituents. As ideas about the function and role of agencies changed over time, public participation norms were modified, but not entirely replaced. As a result, current public participation structures strike a sometimes uneasy balance between different models of democracy and public participation. Interested parties may look to public participation in administrative processes as a way to discover and balance a range of public interests, to enhance voices previously underrepresented in public deliberation, or simply to increase the accuracy, efficiency, and legitimacy of agency decisions and expectations regarding the role of public participants. Agency staff may be similarly grounded in progressive, pluralist or communitarian ideas. Given these mixed and potentially inconsistent goals for public participation, developing a coherent way to measure its effectiveness is difficult.

As a way to address the potentially conflicting goals for and understandings of effective public participation in administrative decision-making, I develop measures of effective public participation tethered to underlying justice theories. These measures allow for more goal-specific assessment of effectiveness and may be helpful in evaluating whether particular participation models are appropriately matched to their stated justice and democracy goals. Developing such measures, however, requires a better understanding of the justice theories meant to be furthered by civic engagement and the socially located constructions of effective participation held by key stakeholders – in this case, the regulatory agency that administers public participation requirements and the affected public that becomes involved in such processes. The next two chapters deal with these issues.

### **Chapter 3: Public Participation and the Goals of Legitimacy and Justice**

Public participation, in one form or another, is necessary for ensuring that government decisions are considered legitimate. If the public does not view a government's decisions as legitimate, compliance is less certain. Government may have to rely on the more costly enforcement mechanisms of force or the threat of force to deter non-compliance. When the decision-making process or results themselves are viewed as legitimate, however, government decisions create binding obligations on society, even in the face of controversy and disagreement (Rawls, 1971). Bolstering legitimacy may be particularly important for environmental or environmental justice decisions, which by definition distribute disamenities, such as pollution, noise, and odors to one area and the corresponding "surplus" amenities to others (Habermas, 1975). Because decisions that impose environmental burdens on an identifiable group are likely to be unpopular or controversial with the burdened group, the appropriateness and broad acceptance of the processes used to reach those decisions become key to establishing legitimacy.

In a broad sense, the legitimacy of government decisions depends on whether they are considered right or just (Habermas, 1979). The simplest form of legitimation relies on universally accepted cosmologies or shared moral codes (Lasch Quinn, 2007; MacIntyre, 2007), which essentially bind individuals to a shared definition of right and wrong and set the boundaries for legitimate government decisions and acceptable community responses (Sandel, 1996). Today, this legitimation model remains powerful in smaller institutions, such as religious communities or specific professions (Hecl, 2011). However, it became less viable at a governmental level as societies diversified and liberal ideals of autonomous and self-directing individuals spread. As societies modernized, external moral or ethical codes sufficiently robust to direct government

decision-making or public response to such decisions became less common. Instead, government began to rely on the direct consent of the public, given through collectively established decision-making frameworks (Habermas, 1975, 1979). Without a clearly defined “right” outcome, decision-making structures are typically chosen to advance one or more of the primary forms of justice: distributive justice, procedural justice, and justice as recognition.

Listing these modes of justice, however, does not provide complete information, as each may be defined differently or given different weight under varying political theories or political movements. Dahl (1989) emphasizes procedural justice tempered by specific safeguards, such as equal and adequate opportunities for citizens to express their preferences, place questions on the agenda and influence the final outcome. Mueller (1992), on the other hand, is willing to ignore inequities in process in favor of reasonable results. Sandel (1996) emphasizes a form of justice as recognition, arguing that a political system unencumbered by the moral teaching and mutual obligations inherent in group membership is unsustainable. Similarly, the justice term in environmental justice may be understood quite differently by affected parties.

Although the environmental justice movement is almost 30 years old, the theoretical underpinnings of the movement have only really begun to be developed in the last decade (Schlosberg, 2007; Yang, 2002; Getches and Pellow, 2002; Taylor, 2000; Kuehn, 2000). Early academic work followed the practical concerns of community activists and their advocates, focusing on hazard distribution, exposure effects, and causal factors for any disproportional distribution of environmental hazards. Activist efforts to define the movement generated the Principles of Environmental Justice, adopted in 1991 by consensus decision at the First National People of Color Environmental Leadership Summit. This broad statement of goals focused on mutual respect, self-determination, universal protection from toxics, nuclear non-proliferation

and sustainability (Principles, 1991). Thus, considering both theoretical and community-based components, the environmental justice movement can also be described as incorporating distributive justice, procedural justice, and justice as recognition goals (Schlosberg, 2007).

If public participation is intended to legitimize government decisions, the structures employed must promote one or more of these underlying forms of justice and the model being promoted must match community definitions of that form of justice. Gauging the legitimacy of an environmental justice-focused participation policy requires a better understanding of both the theoretical and situated definitions of distributive justice, procedural justice, and justice as recognition, as well as their relative importance and their relationship to public participation. This chapter explores the varying theoretical definitions of distributive justice, procedural justice and justice as recognition. In addition, these terms are examined through the lens of the environmental justice movement to track differences in definition or emphasis expected within affected communities. This knowledge will help generate tailored measures of the effectiveness of specific public participation methods in achieving these desired results.

## **I. The Foundational Position of Distributive Justice**

Distributive justice has, for many decades, been used as a primary measure of just societies. Although the distributive mechanisms endorsed varied, political theories of justice were traditionally focused on the fair or appropriate distribution of societal benefits, such as money, opportunities for advancement, or social status, and costs, such as risks or loss of freedom (Schlosberg, 2007; Fraser 1997). Inclusiveness of decision-making structures was considered important, either as a way to ensure that the final distribution properly accounted for all interests (Dahl, 1989) or to guarantee full citizenship to and proper relationships between

individuals (Young, 1990). However, the success of distributive justice models was gauged by results or compliance with distribution rubrics.

Modern political philosophies are less concerned with equality in the final distribution than with some other measure of the appropriateness of allocation. Utilitarians, such as Bentham, focus on generating the greatest good for the greatest number of people (Bentham, 1879). The actual distribution of benefits and burdens is of little concern, so long as the pain created by the allocation does not outweigh the overall benefits (Nussbaum, 2004; Rawls, 1971). Other theorists base their assessment of fair distribution on the method of acquisition rather than the equality of results, drawing on notions of accountability and merit. Nozick (1974) asserts that “distributional justice is historical” (p. 152) and any distribution of goods is just as long as those goods are properly acquired or transferred under a fair set of rules. Walzer (1983) similarly focuses on the justness of distributional structures, arguing that distributional justice requires that dominant goods such as wealth and political power should not be used to monopolize goods in other spheres. Although the emphasis on “fair rules” can be seen as endorsing an equitable distribution of political or economic opportunity, the final pattern of distribution of the goods is less important than the means of distribution.

For most modern political systems, however, legitimacy is dependent on promoting some standard of equality (Sen, 1992) and distributional justice is gauged by how well the allocations meet this standard. However, this formulation does not define the “goods” that are being equally allocated (Sen, 1992). Distributional justice might be achieved by equal distribution of physical resources, equal opportunities for advancement, or social and political equality. Much of the work of political theorists over the past half-century has focused on the question of the spheres in

which distributional equality is important, what equality in that area means, and what structures will ensure a fair distribution of these key goods.

Rawls (1971), for example, advocates a political system that ensures an equal distribution of political rights and freedoms, but allows the uneven distribution of economic and social resources so long as the selected distribution is to the advantage of the least well off. Fairness, in his theory, is not defined by absolute equality, but by creating a distributional system that would be acceptable to someone who did not know his or her actual strengths and weaknesses and could not gauge his or her place in society (Rawls, 1971). Such a system would, in effect, move society toward meeting the basic needs of all, although Rawls does not describe his ideas as needs-based distribution.

Traditional environmental regulations adopt variations on these notions of distributional justice. As in the theoretical realm, environmental and land use laws tend not to demand absolute equality of environmental burden and benefit (Johansson-Stenman and Konow, 2010). Rather, they encourage clustering of environmentally noxious facilities and hazardous materials to maximize the amount of “clean environment” available to the general public and minimize the geographic scope of potential exposure (*see, e.g.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), codified at 42 U.S.C. §§ 9601-9675). This efficiency-based measure of distributional fairness closely follows utilitarian principles (Johansson-Stenman and Konow, 2010). However, most environmental laws also mandate a minimal level of environmental protection for all communities, incorporating components of a need-based system comparable to Rawls’ justice as fairness (Johansson-Stenman and Konow, 2010).

The environmental justice movement differs from the traditional environmental movement by focusing explicitly on the inequitable distribution of environmentally hazardous facilities (Bullard *et al.*, 2007; Lester *et al.*, 2001; Kuehn, 2000; Oakes, Anderton, and Anderson, 1996; Bowen, Salling, Haynes and Cyran, 1995; Anderton, Anderson, Oakes and Fraser, 1994; Bullard, 1994a, 1994b; United Church of Christ, 1987). Although any one facility might comply with environmental standards, academics and community activists raise concerns that environmental laws do not contemplate the concentration of such hazards in a single community or the cumulative impact of such exposures (Faber and Krieg, 2002; Morello-Frosch, Pastor, and Saad, 2001; Cole and Foster, 2001). In addition, the concentration of such hazards is seen as detrimental to community character and as a potential draw for even more unwanted facilities, as exemplified by the proliferation of polluting facilities in communities like Chester, Pennsylvania (Cole and Foster, 2001) and particular African-American neighborhoods in Houston, Texas (Bullard, 2005).<sup>5</sup> As Bullard (2005) notes, the concentration of unwanted land uses “lowered residents’ property values, accelerated the physical deterioration of Houston’s black neighborhoods, and increased disinvestment in these neighborhoods” (p. 45). Although a small number of studies have explored the potential causes of this maldistribution (*see, e.g.*, Saha and Mohai, 2005; Pastor, Saad and Hipp, 2001; Shaikh and Loomis, 1999; Arora and Cason, 1999; Been, 1991, 1994; Been and Gupta, 1997; Yandle and Burton, 1996), most research has focused on documenting the clustering of environmental hazards and the impacts of that fact (Lester *et al.*, 2001).

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<sup>5</sup> In 2001, Chester was home to several older industrial facilities, a sewage treatment plant and several more recent arrivals: a trash transfer facility, a construction and demolition debris recycling facility, a solid waste incinerator, a medical waste incinerator, and a contaminated soil incinerator. Chester was also one of the poorest communities with the highest crime rate and the worst school systems in the state. (Cole and Foster, 2001.)

This suggests that the environmental justice movement is deeply concerned with distributional justice, a view that is strengthened by the facility-specific focus of most legal challenges and community campaigns conducted under the environmental justice banner. Commonly used terminology within the environmental justice movement reflect this norm. The initial nomenclature focused on “environmental racism,” invoking the direct targeting or indirect discrimination against communities of color in distributing environmental burdens and benefits (Taylor, 2000; Chavis, 1993). Government definitions of environmental justice also reflect this tendency, asserting that “no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share” of environmental burdens (*see, e.g.*, NYDEC, 2003; US EPA, 2009).

However, despite the heavy focus on equity in describing the problem, the form of distributive justice sought by the environmental justice movement has never been a simple redistribution of harm. Instead, environmental justice activists and their advocates espouse a universal right to clean air, land, water, and food (Principles, 1991) and advocate a cleaner and safer environment for all. As Pena (2005) argues, justice cannot simply mean equitably divvying up poison. Rather, advocates and community activists describe broader goals focused on sustainability and environmental health (Principles, 1991). Activists began identifying their goal as environmental justice, in part because of the more inclusive connotations of equity, equality and fairness (Taylor, 2000). However, environmental justice activists are concerned with far more than the simple distribution of polluting facilities evoked by a straightforward distributive justice frame. Environmental justice activists routinely engage on a range of issues including sustainability of community, worker rights, housing, community preservation, and access to parks and recreation (Taylor, 2011, 2000; Schrader-Frechette, 2002; Yang, 2002) and

incorporate broad social justice goals in their work (Kuehn, 2000; Taylor, 2000; Foster, 1998; Bullard, 1994a).

Distributive justice, as defined by the environmental justice community, then, may most closely parallel the definition proposed by Sen (1992) – that is, the equitable distribution of those goods and freedoms necessary to achieve the “good life.” Bryant (1995) captured this ideal when he defined environmental justice as equal access to the healthy and sustainable communities necessary to achieve one’s highest potential. Roesler (2011) argues for a similar capability-based approach to assessing the equity of environmental policies and their distributional impacts.

Distributive justice goals of any stripe are only realized in the environmental context through individual administrative actions, such as decisions about facility permitting, appropriate remediation for contaminated sites or safe levels of specific contaminants in air or water. These decisions, as discussed in Chapter 2, are made within an administrative structure that incorporates public participation and review standards meant to open the decision-making process to all affected parties and to limit the influence of holders of dominant goods, such as wealth or political power, over the final outcome. These structures invoke a second primary form of justice – procedural justice.

## **II. Procedural Justice and the Role of Public Participation**

Procedural justice broadly refers to the fairness of decision-making procedures. When the decision-making structure is open, unbiased and based on competent or meaningful criteria, the final outcomes are presumed to be sound and just (Thibaut and Walker, 1975; Tyler, 1988; Levanthal, 1980). Although the specific structures necessary are not well-defined, researchers have found a core set of principles that appear to be at the heart of the public understanding of procedural justice.

In part, the notion of procedural justice is tied to a liberal understanding of the role of government and the nature of freedom. A liberal procedural justice model is aimed at balancing multiple interests rather than finding a single “correct” or universally acceptable resolution (Rawls, 1971), although such universally acceptable resolutions may be realized under specific circumstances or particular procedural norms. To maximize individual freedom, the state prioritizes fair procedures over specific outcomes (Sandel, 1996). By emphasizing fair decision-making procedures, the state need not reach judgment on the relative merits of different public conceptions of a good or appropriate outcome. Rather, government actors ensure that the process is open to the public, receive whatever information is provided, apply pre-defined technical standards and reach a justifiable result. Procedural justice theory holds, and empirical research confirms, that the acceptability of the result depends on whether the public perceives the decision-making process as fair or just.

Some of the earliest efforts to define procedural justice studied decision-making within the legal system and within organizations and focused on notions of control and process/outcome characteristics. Thibaut and Walker (1975) evaluated the relative importance of process control, or the ability to inject information into the decision, and decision control, or the ability to control the final outcome. The initial study found that both were important in participant assessments of the overall fairness of a procedure (Thibaut and Walker, 1975), although later studies found that process control was the more significant of the two (Tyler, 1988). Levanthal (1980) evaluated six process or outcome characteristics: consistency of treatment within the process and consistency of result, ability to suppress bias, decision quality or accuracy, correctability of the decision, representation of the public within the decision-making process, and ethicality of the process. Subsequent studies have found that the general public ranks consistency or similarity of

treatment and outcome across time and between participants as the most significant characteristic of procedural justice for the public (Tyler, 1988). Accuracy of results, bias suppression and representation within the process were important secondary factors (Tyler, 1988).

Thus, as defined by participants in the legal system and organizational decision-making, procedural justice requires that individuals are treated equally within the decision-making structure and that similar fact patterns generate similar results. To achieve this consistency, the decision-making process must be defined and regularized, rather than unstructured and ad hoc. Decision-making processes must be accessible to ensure that the public and its members varying interests are well-represented. Decision-makers and their final decisions must demonstrate a lack of bias and technical competence. Finally, to allow the public to assess whether these standards are met, the entire process must be transparent.

Although the studies from which these elements are derived did not involve administrative decision-making processes, the findings are translatable given the similarities of context. In particular, the legal setting used by Tyler in his research is directly comparable to the administrative permitting process at issue in this research. In both contexts, the process is intended to be guided and the outcome determined by an uninterested decision-maker. In both contexts, the final decision is constrained by a set of rules that establish the boundaries of acceptable decisions. In both contexts, participants are allowed to act in partisan ways and their role is to provide relevant “facts” to the process – either details of the conflict being resolved in the legal cases or information about environmental impacts and community interests in the administrative decisions. In addition, in both contexts, there are rules for participation. Given these structural similarities and the coherence of the differently derived strands of procedural

justice research, this literature is applicable to the administrative decision-making context as well.

The earliest and still most common public participation processes in the administrative context, such as standard notice and comment provisions, embody these basic ideals (Dietz and Stern, 2008). Environmental laws generally require that the public receive notice of pending decisions; have access to applications, technical assessments and other relevant materials; and have the opportunity to provide additional data and comment on the likely impacts of a proposal, its compliance with applicable standards, and their preferred outcomes (Dietz and Stern, 2008). If this process is open and allows full participation, the presumption is that decision-makers will have sufficient information about the issue and public preferences and the final decision will reflect these preferences and be fair and legitimate (Williams and Matheny, 1995).

Environmental justice activists and their advocates similarly have embraced the goal of procedural justice. The formal federal and state government definitions of environmental justice directly incorporate procedural justice ideals, defining environmental justice as “the fair treatment and meaningful involvement of all people, regardless of race, color, or income with respect to the development and implementation of environmental policy” (*see, e.g.*, NYDEC, 2003; USEPA, 2009). At minimum, this definition requires that the interests of all affected communities be considered in environmental decisions, whether those interests are presented by community members themselves or by other legitimate representatives (Bryner, 2002). The federal government and many states have adopted policies mandating the consideration of environmental justice impacts in all permitting or other policy decisions (E.O. 12898; Bonorris *et al.*, 2010). However, data from within the movement suggest a more robust definition.

The Principles of Environmental Justice demand a meaningful voice in environmental decisions for all communities (Principles, 1991). Specifically, the Principles call for full participation in environmental decision-making and “environmental self-determination” for affected communities (Principles, 1991). Environmental justice communities are envisioned as equal partners in environmental decision-making (Principles, 1991). Most environmental justice activists and their advocates argue that affected communities should have real access to the decision-making process and that their views and concerns be taken into account by the decision-makers (Bryner, 2002). The Model Plan for Public Participation (NEJAC, 2000) also envisions community influence on all stages of the decision-making process, including the structure of public participation and criteria for decision.

Regardless of activist preferences, current laws typically only require state agencies to give reasonable consideration to public comments and concerns within the scope of existing legal structures (Lazarus and Tai, 1999). As a result, state agencies are likely to view environmental impacts under a streamlined schema that simplifies complex concerns (Scott, 1998). Such simplification may promote efficient decision-making, but it can also exclude relevant concerns that do not fit within the narrow category of harms to be considered in permitting. Communities and individuals that are primarily concerned with such issues may feel excluded as well. These communities may find themselves asked to abandon their interests or transform their concerns into terms cognizable by the state, a change which may alter the underlying concern or even the community itself (Scott, 1998). Such unintended transformations may be particularly prevalent within a diverse and pluralistic society such as the United States and within subject areas that involve this diversity, such as environmental justice concerns. As a result, a third type of justice – justice as recognition – becomes an important consideration.

### **III. Understanding Recognition as a New Form of Justice**

Recognition has only recently been proposed as an independent component of justice separate from and provided differently than distributive or procedural justice (Fraser, 1997), although it was long acknowledged as an essential element of society and of government. Rawls described the social bases of self-respect, which include respect of others and recognition as fully participating citizens, as a primary good (1971, 1993). However, recognition was viewed as a secondary benefit of the political process and was arguably not a measure of government legitimacy (Rawls, 1993).

As participatory models of governance became more common and recognition gained traction as a separate theoretical model of justice, its role in legitimizing government decisions was more widely acknowledged. Tully (2000), for example, argues that recognition in the form of welcoming the public into decision-making and hearing and responding to their concerns, whether or not the final decision reflects their interests, can produce a sense of belonging to and being bound by the political system. That is, participation can both ensure that the participant is recognized as a full citizen and that the participant recognizes the political system as a legitimate source of obligations. Young (2000) also suggests that deliberative processes are only meaningful legitimation tools if the system recognizes all parties as rightful participants. Recognition as justice is tied to issues of self-determination, acknowledgment of identity, and democratic participation (Figueroa, 2003).

Recognition is conceived in different ways, each of which may be a reasonable construction in various contexts (Tully, 2000). At base, all models of recognition require mutual respect, a sense of equality, and acknowledgment and tolerance of difference rather than forced or presumed assimilation (Figueroa, 2003; Fraser, 2000; Honneth, 1992). This allows individuals

and groups to construct meaningful self-identities (Fraser, 2000). Individuals or groups that are devalued or not properly recognized by society or the state may internalize the external society's negative perception of self, accepting themselves as "less than" (Schlosberg, 2007; Markell, 2003; Fraser, 2000; Emcke, 2000), or may find themselves excluded from or unrecognized within state institutions or government decision-making. The misrecognized or unrecognized may learn to see themselves or come to be framed as less capable of making decisions, representing themselves in public debate, or otherwise participating in government (Honneth, 1992) and, as a result, be stunted in their ability to achieve their particular version of "the good life" (Fraser, 2001). Recognition provides external affirmation of dignity and place, building self-confidence (Schlosberg, 2007) and ensuring creation of a place at the decision-making table (Fraser, 2000, 2001). However, the object and scope of the act of recognition are not clearly defined in the theoretical literature.

The identity model of recognition, or social recognition, relies on knowledge of, respect for, and appropriate response to the distinctive identity of each person or cultural group (Markell, 2003; Fraser, 2000; Taylor, 1992, 1994) and occurs between two parties – self and other (Tully, 2000). The fundamental problem is the misrecognition and devaluing of the individual or group's essential identity, typically grounded in culture, race, ethnicity, or gender. Social recognition refers to the acknowledgment or affirmation of the self-defined cultural, racial, ethnic or gender-based identity of the "recognize" by the "recognizer" (Markell, 2003; Fraser, 2000, 2001; Honneth, 2001). Social recognition can be achieved through private interactions and does not have to be encoded in government action or structures. Moreover, it is directed outward toward the person or persons being recognized (Honneth, 2001). While social recognition may be mutual, in that both parties "recognize" the other's authentic self, social recognition does not

require fundamental changes to or reorganization of the recognizer's own sense of self. Thus, in the identity or social model, recognition is an externalized act.

Although the object of social recognition is often described as an individual or a group, social recognition aimed at a group can be problematic. Critics argue that, by focusing on culturally or ethnically-defined source of identity, theories of recognition confine individuals within a group-defined identity (Fraser, 2000; Young, 2000). By acknowledging or valuing individuals through a standard set of culturally defined traits, identity or positions, "recognition" may have the perverse effect of devaluing the particular person being observed or failing "to give sufficient force to personal freedom and individuality" (Young, 2000, p. 99). This conflict is partially resolved when the object of social recognition is redefined as the individual, even if that individual's authentic identity is grounded in his membership in various cultural, ethnic, or other identity groups. Limiting the object of social recognition to the individual acknowledges the intersectionality of individuals or the components of personal identity defined by membership in multiple defining groups (Hill Collins, 1998). Individuals may then draw on ethnic or cultural identities for elements of self, but are free to pick and choose from multiple sources, relying on notions of intersectionality. Thus, social recognition is best defined as focused on the individual, rather than the group.

A second model of recognition, called the status model of recognition or institutional recognition, more readily allows defined social groups to be the object of recognition and requires a broader scope to the act of recognition. The status model of recognition views the fundamental problem not as one of individual social interactions, but of structural inequalities created through formal institutions (Fraser, 2000; Young, 2000). Claims of misrecognition in this context focus on social or political status and the institutional failure to accord specific

individuals or groups the social status of full members of society (Fraser, 2000, 2001; Honneth, 2001).

However, simply seeing and accepting diverse cultural norms or beliefs at an individual scale or within social relationships may not be enough to accord those individuals or groups the status of full members of society. Valuing diversity without consideration of potentially oppressive institutions or social structures may give voice to members of minority groups, but not give that voice sufficient weight to overcome a socially or institutionally constructed problem (Hill Collins, 1998). Further, to make such formal recognition meaningful, institutions may not be able to rely on neutral or “colorblind” structures (Schlosberg, 2007).

Efforts to make colorblind decisions in other environmental contexts have often created inequitable results. Discriminatory processes in the housing market, for example, may interact with neutral decisions regarding hazardous facility siting to create a disproportionate impact on racial minorities (Cole and Foster, 2001). Colorblind assumptions regarding exposure through food sources may institutionalize environmental standards that are not protective of racial minorities (Schlosberg, 2007). The appropriate remedy in this case requires more than rendering differences visible and removing social stigma. Instead, institutional recognition takes the form of structural changes to ensure that all individuals and groups, regardless of prior status, are able to fully participate in governance from positions of rough equality (Fraser, 2000; Hill Collin, 1998; Pena, 2005). Through formal recognition as equal and rightful participants in societal institutions, individuals and groups are validated and better able to construct and act on a positive self-image as efficacious citizens. To accommodate full participation from members of the previously excluded group, particularly those who speak in culturally distinct voices, the institutions themselves must change (Young, 2000). Rather than relying entirely on rational

argument and hard data, for example, institutions may have to adapt to value narrative or rhetoric, accept anecdotal data as a starting point for analysis, or re-evaluate the limits of what is relevant to the decision at hand (Young, 2000).

In addition, the recognizing individuals or institutions may derive their identities, in part, from the structural inequalities being diminished through institutional recognition.

Environmental agency staff, for example, may be valued for their role as neutral experts based on the assumption that anecdotal evidence (i.e., narrative) is less valid or more inherently biased than numeric data. Reevaluating the evidence that is relevant to a particular decision or the validity of particular methods of framing that evidence may require a re-evaluation and reframing of the agency's own assessment methods.

In other words, effective institutional recognition is both externally and internally transformative. Externally, institutional recognition affirms the "other" through outward markers of respect. Internally, institutional recognition demands modifications to institutional structures or even to the identity of individuals working within those institutions based on the knowledge of and relationship with the other (Markell, 2003). Thus, if public participation is intended to further institutional justice as recognition, affected individuals and groups must be given more than the ability to speak; their concerns must have weight and the potential to move the institution (Pena, 2005).

Institutional recognition is also more appropriately viewed as group-focused, since it focuses on rectifying structural inequality between dominant and marginalized groups that exclude the marginalized groups from participation as full members of society (Fraser, 2000; Hill Collins, 1998). The necessary structural changes require governmental or group action, rather than relying on peer-to-peer acknowledgment of status change. In addition, status change will be

accorded to the previously unrecognized group and individuals will only be able to take advantage of that status through their membership or presumed membership in the marginalized group, not their multi-faceted individual identity. As a result, institutional recognition may emphasize group autonomy and group role in government decision-making rather than individual autonomy or equality (Pena, 2005).

Justice as recognition is outside the scope of traditional environmental concerns, but the environmental justice movement has adopted this goal for the historically marginalized communities most affected by environmental hazards. As Schlosberg (1999) notes, acknowledging the validity of the environmental justice movement is inherently a form of recognition of diversity. Early environmentalists perceived environmental risk as egalitarian or leveling (Beck, 1992) and as a universal cost of membership in a technologically advanced society, both in terms of actual exposure and the meaning accorded to that exposure. The environmental justice movement, however, demands recognition of both the disproportionate and identity-based distribution of environmental risk and the different ways in which this risk is experienced (Schlosberg, 1999).

Environmental justice activists and their advocates have frequently focused on identity-related concerns, such as the exclusion of people of color from the environmental organizations, regulatory agencies and oversight structures that define the scope of and response to environmental hazards and the failure of mainstream environmental groups to include urban issues and equity concerns in their action agendas (Taylor, 2011; Di Chiro, 1998; SouthWest Organizing Project, 1990).<sup>6</sup> Standard histories of the environmental movement excluded urban

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<sup>6</sup> The SouthWest Organizing Project is a network of environmental justice organizations based in the southwest United States. In 1990, this group sent a letter to the ten dominant environmental organizations (known as “The Group of 10”) criticizing their failure to consider the effect of their actions and initiatives on communities of color, Native American communities, and low-income communities and the lack of diversity within the organizations themselves.

issues, such as Jane Addam's focus on waste management and municipal housekeeping as part of the Chicago settlement house movement or Alice Hamilton's effort to address occupational hazards (Schlosberg, 1999, Taylor, 2010). Experiential or identity-based information was almost entirely excluded from the analysis of community-health issues by the 1930s, as investigators "ignored social factors or treated them as nuisance variables in statistical models that focused on isolating germs" (Corburn, 2005, p. 31). As early as 1970, African-American leaders complained that issues relevant to their communities, such as poor sanitation, overcrowded and unsafe housing, and exposure to vermin, were omitted from the emerging environmental movement (Taylor, 2011; Hurley, 1995). By framing the traditional environmental movement in this narrow manner, the environmental justice movement could be characterized as radical and outside the scope of most environmental organizations.

Although the emphasis has been on structural barriers to participation, environmental justice activists have complained of being individually dismissed or disrespected based on group membership. Schlosberg (2007) noted frequent instances of agency disrespect during public hearings, where staff referred to community members by first names rather than title or talked amongst themselves while the public gave testimony. At one public hearing, translation services were only provided in a small section at the very back of a large auditorium, meaning that non-English speaking residents were marginalized within the public discussion (Cole and Foster, 2001). Community activists, who are often older minority women, may be labeled overly emotional or "hysterical housewives" and their concerns dismissed (Di Chiro, 1998). These failures of social recognition mark individuals as "less than" and their concerns as dispensable within the decision-making process.

The movement also critiques policy-makers and institutions as having failed to consider environmental justice concerns. Environmental regulations developed to address traditional environmental concerns ignore distributional issues and differential impacts. Environmental justice activists and their advocates demanded “public policy . . . based on mutual respect and justice for all peoples” in the collaboratively developed Principles of Environmental Justice (Principles, 1991), suggesting the importance of socially located construction of environmental concerns. Calls for mutual respect for all peoples, cultural and environmental self-determination, and recognition of the validity of community or citizen information can also be considered within the category of justice as recognition (Yang, 2002; Kuehn, 2000; Taylor, 2000; Gauna, 1998).

Based on the academic literature and the actions of the environmental justice community, environmental justice includes the goal of justice as recognition. Further, both social and institutional recognition appear to be important. By demanding respectful inclusion of all affected individuals, environmental justice activists and their advocates are seeking a form of social recognition. By insisting that their concerns be addressed and that institutions be modified to provide comparable access to participants regardless of their language or mode of expression, they are also demanding a form of institutional recognition.

#### **IV. Conclusion**

Public participation is intended to provide legitimacy to government decisions. To do so, it must promote one or more of the underlying forms of justice demanded by society. The three most relevant forms of justice discussed in political theory are distributive justice, procedural justice and justice as recognition, each of which has been defined in multiple ways or with

multiple components. In the environmental context, distributional justice may refer to equitable distribution of hazards, hazard distributions that guarantee at least a base level of environmental protection to all, or equal access to the environmental conditions necessary to thrive. Procedural justice may refer to unbiased and competent decision-makers, accessible processes where the public may make its voice heard or equal influence over the final outcome. Justice as recognition may refer simply to the acknowledgment and affirmation of individual identity or to institutional changes required to accord equal political status to previously disenfranchised or marginalized groups.

Creating meaningful measures of effective public participation that are applicable to multiple constituencies in the environmental justice context requires an understanding of how each mode of justice is defined within the affected community. In addition, public participation is not the only method of achieving any particular form of justice and stakeholder groups may view the relative contribution of participatory processes to achieving these forms of justice differently. Creating sound measures for effective public participation requires understanding this dynamic as well.

The next chapter addresses these questions using the results of a preliminary study. This work involves analyzing hearing transcripts from permitting or siting decisions affecting communities defined as “environmental justice areas” under New York policy and interviewing environmental justice activists and advocates and environmental agency staff. Based on this data, I assess how these two groups define effective public participation, identify the justice goals inherent in those definitions, explore the relationship between effective public perception and the underlying justice goals, and assess their relative importance. This data is used in subsequent

chapters to develop specific criteria for and measures of effective public participation grounded in the underlying justice theories.

#### **Chapter 4: Exploring Situated Definitions of Meaningful Public Participation**

As discussed in earlier chapters, over the past 30 years, a new social movement has arisen in the United States and around the world. The environmental justice movement challenges the skewed distribution of polluting facilities and environmental disamenities in low-income communities and communities of color. Its goals, which developed organically from the largely independent actions of community organizations and grassroots activists across the United States and around the world, include fair treatment and meaningful participation in environmental decision-making for all communities. The mantra of the movement – we speak for ourselves – signals a focus on participation and recognition or respect as key components of environmental justice.

Within the United States, the environmental justice movement has rapidly moved from the arena of street protests to the agenda of legislatures and policy-makers. At the state level, most of these new efforts, including the EJ policy enacted by New York, are focused on ensuring that state agencies directly consider the environmental justice impacts of their actions or on improving opportunities for public participation within the low-income and minority communities most often affected by the siting or regulation of environmental hazards (Bonorris *et al.*, 2010). Designed to respond to environmental “injustice,” these policies must be geared toward promoting some form of justice – distributive justice, procedural justice or justice as recognition.

As noted in the previous chapter, there may be multiple ways of understanding each of these modes of justice and different expectations regarding their relationship to public participation norms. Without rough agreement among stakeholders on what these justice goals

require and how they are tied to public participation norms, the best intentioned policies will fall short of legitimizing or making governmental decisions acceptable to the affected public. For example, if environmental justice communities define a just process as one in which the affected parties have veto power or greater influence over the decision to issue a permit to a polluting facility than other stakeholders, a policy designed to ensure that all issues and preferences are surfaced and considered in the final decision is unlikely to be broadly acceptable. In particular, it is important to understand the degree to which regulatory agency definitions match the dominant view in affected communities, since these groups will be most engaged with each other in permitting or policy-development decisions. Developing appropriate measures to evaluate the effectiveness of public participation in the environmental justice depends on answering two key questions:

- (1) Do environmental justice communities, defined by race and/or class, and regulatory agencies agree on the elements of distributive justice, procedural justice, and justice as recognition to be achieved through public participation in the environmental justice context?
- (2) Do environmental justice communities, defined by race and/or class, and regulatory agencies agree on the relationship between and the relative importance of public participation in achieving these justice goals within environmental justice communities?

This chapter addresses these questions based on the existing literature, analysis of transcripts of public hearings for environmental permits affecting environmental justice communities, and semi-structured interviews with environmental justice advocates, community activists and environmental agency staff in New York State. In the prior chapter, I discussed theoretical constructions of the underlying justice goals, identified the key justice components of

the environmental justice movement and explored the potential distinctions between the environmental justice and traditional understanding of each mode of justice and its relationship to public participation. In this chapter, I explore these differences in more detail, based on field data. These results will help to refine the measures of effective participation applied to the broader case study described in the following chapters.

## **I. Overview of Research Methods**

Data were gathered from a review of the transcripts of seven public hearings involving environmental justice communities and from sixteen semi-structured interviews with environmental justice advocates, community activists, and environmental agency staff. Both the hearing and interview transcripts were analyzed using emergent coding, meaning that analysis did not use pre-determined codes. Instead, codes were developed through initial review of the data, allowing the capture of unexpected ideas or themes.

The seven public hearings reviewed were chosen because they related to permitting processes identified as affecting environmental justice communities and generated public comment. Most were identified as triggering New York's Environmental Justice (EJ) policy; two were identified based on the demographic composition of the affected area, but did not trigger the EJ policy for procedural reasons.<sup>7</sup> The hearings were located throughout the state, although several were in or around New York City and only one was in a rural area. All of the hearings included formal public comment sessions held by the regulatory agency with decision-making power; one transcript also included a more informal question and answer period. Six of the seven involved waste treatment; one involved a power generation facility. Half involved new facilities

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<sup>7</sup> As described earlier, New York's EJ policy, enacted in 2003, is triggered by an application to the Department of Environmental Conservation for a major permit or a major permit modification for any facility located in an "environmental justice" community. Any urban community with a minority population of 51.1% or more, any rural community with a minority population of 33.3% minority or any community with low-income population of 23.9% qualifies as an "environmental justice" community. "Minority" is defined as anyone other than a non-Hispanic white (CP-29.)

and half involved expansions or modifications. For six of these projects, the community was or would have been identified as an environmental justice community based on race; the seventh triggered New York's EJ policy based on the income of the affected community. See Table 4-1 for more information on each of the hearings.

Using the emergent coding described above, transcripts were analyzed for issues raised about the process or project and the framing of those issues; the apparent goal of participation, particularly as related to specific forms of justice; and direct complaints about the process or the project. After reading and analyzing all transcripts, the codes were compiled into a "code book" and reviewed for redundancy or overlap. The definitions were refined to distinguish similar, but non-redundant codes and to identify code families or related codes. Hearing transcripts were then reviewed and recoded as appropriate, relying on the definitions in the refined code book.

Codes were compiled in two ways. First, codes were counted by "distinct speech act," meaning that each distinguishable and unique comment made by a hearing speaker was counted separately. For example, one code used in this research was "procedural inadequacy" which applied to statements that raised procedural deficiencies in the review process. If a single speaker complained of insufficient notice and subsequently noted that meeting was inconveniently scheduled, the relevant code would be counted twice for that speaker. Second, codes were counted by speaker. For example, the code "technical inadequacy" applied to any complaints regarding the effectiveness or safety of proposed permit terms. If a single speaker raised technical concerns about the permitted emission levels of multiple chemicals or the ability to monitor for chemical releases, the relevant code would be counted only once. This double coding allowed an assessment of both the scope of particular definitions and their relative importance to particular speakers.

**Table 4-1: Hearings Analyzed to Define Effective Public Participation**

	<b>Type of facility</b>	<b>Rural/Urban</b>	<b>Type of Permit</b>	<b>Race/class</b>	<b>Number of speakers</b>
Hearing A	Sewage treatment	Urban	New	Race	16
Hearing B	Solid waste landfill	Rural	Expansion	Class	24
Hearing C	Solid waste handling facility	Urban	New	Race	20
Hearing D	Solid waste handling facility	Urban	New	Race	38
Hearing E	Medical waste handling facility	Urban	Modification	Race	35
Hearing F	Power generation plant	Urban	Modification	Race	9
Hearing G	Sewage treatment	Urban	New	Race	16

In addition, data were collected through a series of semi-structured interviews. The first seven interviews were conducted with staff members of organizations known for their work on environmental justice issues (“environmental justice advocates”) and community activists prominent in specific environmental justice cases (“community activists”) (collectively called “activists”). These organizations were identified through the environmental justice literature, media coverage and the list of participants on the New York State Environmental Justice Advisory Group. The remaining three interviewees were identified through recommendations of initial interviewees. Activists were only interviewed if their job description or activism required them to become involved with public participation efforts or specific permitting processes. In total, ten activists were interviewed for this stage of the research. Seven of the interviewees were considered environmental justice advocates and three were community activists. Five of the interviewees were women, five were men. In addition, five belonged to a minority group (3

African-American, 1 Asian and 1 Hispanic) and the remainder were white. See Table 4-2 for additional details about the activist/advocate interviewees.

**Table 4-2: Activists and Advocates Interviewed to Define Effective Public Participation**

	<b>Status of Organization</b>	<b>Organizational role</b>
<b>Activist A</b>	City-wide, professional staff	Attorney
<b>Activist B</b>	Community-based, largely volunteer	Executive Director
<b>Activist C</b>	Community-based, professional staff	Organizer
<b>Activist D</b>	Community-based, volunteer	Organizer, community leader
<b>Activist E</b>	Community-based, volunteer	Community leader
<b>Activist F</b>	Community-based, volunteer	Activist
<b>Activist G</b>	Community-based, professional staff	Organizer
<b>Activist H</b>	National, professional staff	Attorney
<b>Activist I</b>	Community-based, professional staff	Policy analyst
<b>Activist J</b>	Community-based, professional staff	Executive Director

Agency staff were selected to be interviewed based on their level of involvement with community participation. A general request for interviews was circulated to the Department of Environmental Conservation staff members, describing the research and the criteria for interviewees. In addition, personal requests for interviews were made to agency staff from around the state whose job duties included work on environmental justice issues, citizen participation or direct engagement in public participation processes. Six agency staff members were interviewed for this work. All but one of these staff members was white; four of the six were men. See Table 4-3 for details about the agency staff interviewees.

**Table 4-3: Agency Staff Interviewed to Define Effective Public Participation**

	<b>Organizational Role</b>	<b>Urban/rural focus</b>
<b>Administrator A</b>	Permitting/public participation specialist	Predominantly urban
<b>Administrator B</b>	Public liaison	Predominantly rural
<b>Administrator C</b>	Public participation specialist	Mixed urban and rural
<b>Administrator D</b>	Regional director	Mixed urban and rural
<b>Administrator E</b>	Permitting specialist	Predominantly rural
<b>Administrator F</b>	Permitting specialist	Mixed urban and rural

Interviews ranged from 45 minutes to two hours. Interviewees were asked about their experiences with public participation processes generally and about the specific processes with which they had been involved. Specifically, interviewees were asked to describe a public participation process – or elements of a public participation process – that worked particularly well and one that did not. In addition, they were asked directly about their expectations for public participation and about any concrete changes that they might recommend to make public participation more effective in future. All but one interview was audiotaped; transcripts were coded and analyzed manually.<sup>8</sup> Because of the more direct nature of the interviews, codes were focused on respondent assessment of the goals and necessary elements of effective public participation, particularly as they related to specific forms or sources of justice. Codes were compiled and refined using the same methods applied to the hearing transcripts.

The study used a purposive rather than a random sample. As a result, the data is of limited generalizability. Generalizability issues related to the hearings reviewed are compounded by the fact all but one related to waste management and most were in urban areas, meaning that the sample may not capture variations related to the technical complexity or the rural and suburban settings. However, given the definition of an EJ community, the policy is most often applied in urban communities and, in other aspects, the hearings capture a range of relevant

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<sup>8</sup> In that case, audio taping was not possible and data was collected through conversation notes.

characteristics including income level, racial composition, degree of community organization and experience with public engagement processes. Thus, the selected hearings are a fair, if not perfect, representation of the affected population.

The small sample size also raises issues about representativeness of the data and its suitability as a basis for theory development. However with respect to both the hearings and the interviews, the data had begun to settle into recognizable patterns and significant new codes were not emerging, suggesting that data saturation was reached and sufficient interviews had been conducted (Guest, Bunce, and Johnson, 2005).<sup>9</sup> Further, the number of interviews conducted and hearings analyzed for this preliminary research is within the range defined as likely to produce saturation (Guest *et al.*, 2005). With respect to the interviewees, in particular, smaller data samples have been found sufficient where the group being studied has developed significant expertise in the relevant area or inquiry (Romney, Weller, and Batchelder, 1986).

## **II. Situated Understandings of the Goals of Effective Public Participation**

As discussed earlier, the formal definition of environmental justice adopted by most state and federal agencies 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” (US EPA, 2009). Based on both the hearing data (Table 4-4) and the interview data (Table 4-5), agency staff and community members appear to share a common understanding of the distributive and procedural justice components of environmental justice and, for both, procedural justice goals eclipsed distributive justice goals. However, these groups differ significantly in their understanding of justice as recognition.

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<sup>9</sup> “Data saturation” is defined as “the point in data collection and analysis when new information produces little or no change to the codebook” (Guest *et al.*, 2005, p. 65).

### **A. Situated Understanding of Distributive Justice Goals of Effective Public Participation**

Distributive justice refers to the fair and appropriate allocation of the benefits and burdens created by society, as judged by various measures. These measures include utilitarian norms (allocating benefits and burdens to create the greatest good for the greatest number), acquisition-focused norms (ensuring that benefits and burdens are allocated under fair rules) or equality-focused norms (providing equal opportunities for individuals to accrue social goods). Within the environmental justice movement, distributive justice is best described as focused on adequate and equitable protection of communities and the environment rather than strictly equal distribution of risk. Environmental agencies are tasked with ensuring that regulated projects meet applicable standards and comply with health, safety and environmental protection requirements (Lazarus and Tai, 1999). Administrator E captured this idea when he stated that “[t]he law states that if you can meet the criteria, the standards for permit issuance, we have to issue the permit.” These standards are presumed to provide adequate protection to all affected parties.

Concerns outside the regulations, such as equitable distribution of risk, are not factored into agency assessment of “fair treatment” or distributive justice. As Administrator F noted, agencies “have to follow our regulations in making decisions. And that may mean that we can’t agree with every comment that comes in the door.” The hearings confirmed this understanding. Six of the seven hearings analyzed included opening presentations by agency staff. Each of these presentations discussed the potential environmental and/or public health impacts of the proposed project and four of the five described planned mitigation. None raised the geographic or historic equity of environmental burdens imposed on the community and the only presentation to mention site selection supported the choice based on efficiency rather than equity.

Further, none of the agency interviewees mentioned the equity of the final result in describing a good or appropriate outcome. Three of the six agency interviewees stressed that good decisions were those that complied with applicable law and regulations. Four of the six described public input as primarily ensuring that agency staff had all the facts necessary to correctly apply law and regulations. One noted that the EJ policy's requirement for discussions between the applicant and the affected community was important precisely because it allowed for consideration of broader equities (see Table 4-5). Thus, for agency staff, distributive justice is best defined as distributing a regulatory-determined minimum level of protection to the public through technical or operational controls.

Hearing participants accepted this definition in part, as indicated by their focus on technical or public safety issues. More than one-third of the community speakers (43% and 68 of 158) addressed comments to the proposed project's failure to provide basic protections, control specific impacts or meet applicable technical standards or on inadequate assessments of these concerns by the regulatory agency. An additional 20% of speakers (32) raised public health issues more broadly. Together, these concerns were the most frequently raised within the public hearings analyzed, comprising approximately one-fifth of all distinct speech acts. Even when the technical issues raised were outside the existing scope of agency analysis, concerns were framed in terms of the minimal protection model of distributive justice. For example, a speaker in Hearing B framed concerns about odors, which is often considered a quality of life issue, in terms of health impacts and vulnerable communities, stating, "the stink is obnoxious. But the stink is noxious....This noxious gases [sic] affect everyone in the community, primarily small children, elderly and those with immune deficiencies."

**Table 4-4: Summary of Coded Hearing Data (Community Members Only)**

<b>CODES</b>	<b>Speech Acts (Total)</b>	<b>Speech Acts (Percentage)</b>	<b>Speakers (Total)</b>	<b>Speakers (Percentage)</b>
<b>Distributive justice (adequate protection)</b>				
Technically inadequate	78	12.4%	68	43.04%
Public health concerns	36	5.72%	32	20.25%
Environmental improvement	4	0.64%	4	2.33%
<b>Distributive justice (fair distribution)</b>				
Equitable distribution/focus on hazard distribution	61	9.72%	36	22.79%
Historic practices	28	4.41%	23	14.56%
<b>Procedural justice (transparency, openness, lack of bias)</b>				
Procedurally inadequate	76	12.08%	45	28.48%
Meaningless participation	22	3.5%	18	11.39%
Lack of trust	40	6.36%	29	18.35%
<b>Justice as Recognition</b>				
Claiming Expertise	45	7.16%	44	27.84%
Community Ownership	24	3.73%	20	12.66%
Community role not respected	48	7.63%	41	25.95%
Non-regulatory concerns	141	22.03%	82	51.9%
<b>Totals</b>	612		158	

Unlike agency staff, however, community members were also concerned about inequitable exposures to environmental hazards. Approximately 15% of all distinct speech acts (89) by community members in the public hearings analyzed and 37% of all speakers (59) challenged the proposed project based on historic inequities or current imbalance of environmental hazards.<sup>10</sup> Typical of these comments was a statement by a resident in Hearing D who asked, “Why do you have to dump it on us? Everything is dumped [on us]. We’re tired of being dumped on; we’ve been dumped on for years.” Another resident stated his concern even more succinctly: “Not in my backyard again...It’s already been here.” Another representative

<sup>10</sup> Statements coded “Historical Practices,” “Equitable Distribution,” or “Focus on distribution of hazards” were considered to raise current or historic imbalances in environmental exposure. A total of 23 speakers raised issues related to historical practices, 17 spoke about equitable distribution, and 19 focused on the distribution of hazards generally.

comment highlighted the on-going struggles in the host community and questioned the wisdom of adding new potential burdens, particularly in comparison to other areas perceived as being wealthier or more powerful: “We have so many problems already. Why are you creating more? We’re not Park Avenue. We’re not Fifth Avenue.”

However, the proposed solution to these discrepancies was not to send the unwanted facilities to wealthier or more pristine communities. Rather, residents called for the facility to be moved to “more appropriate” locations away from residential areas, redesigned to protect the community or simply not built. Similarly, only 3 of 10 activists interviewed mentioned the equitable distribution of environmental hazards as measures of effective public participation and only briefly (2.63% of all speech acts). None of the interviewees specifically stated that effective public participation meant winning a challenge to a specific facility. Rather, the most common outcome-related markers mentioned by environmental justice advocates and activists were changes to the review process or the final permit that reflected or took community concerns into account. However, even though every environmental justice advocate and community activist interviewed raised this issue, the comments accounted for less than 7% of all speech acts, suggesting this was not the primary measure of effectiveness (see Table 4-5).

This lack of emphasis does not suggest that distributive justice is unimportant overall to activists. Rather, adequate environmental protection is derived from the permitting regulations themselves. As Activist A noted, “[a] permitting hearing...is only as good as the permitting process around it. So if you have a permitting process that doesn’t look at the issues before it, doesn’t look at those critical environmental justice issues like cumulative burden to the community and things like that,” the best public participation process is not going to be good enough.

**Table 4-5: Summary of Coded Interview Data**

<b>Code/Code Family</b>	<b>Activists (Interviews)</b>	<b>Activists (Statements)</b>	<b>Agency (Interviews)</b>	<b>Agency (Statements)</b>
<b>Distributive justice</b>				
Equitable results/process	3 of 10	2.63%	0 of 6	0%
Specific changes in Process/ Outcome	10 of 10	6.14%	3 of 6	3.33%
<b>Procedural justice/access</b>				
Good process	10 of 10	13.16%	6 of 6	15%
Informed/technically educated participants	7 of 10	4.97%	3 of 6	4.44%
Balanced process	8 of 10	7.89%	3 of 6	7.89%
Information to Community	1 of 10	0.29%	3 of 6	7.22%
Range of Voices	6 of 10	4.68%	4 of 6	7.22%
<b>Procedural Justice/Voice</b>				
Responsiveness of Agency	10 of 10	23.98%	6 of 6	18.89%
Questions answered	4 of 10	1.7% (7.3% of category)	5 of 6	7.8% (40% of category)
Open to Change/Flexible	9 of 10	5.8% (24% of category)	4 of 6	4.1% (32% of category)
Dialogue/discussion	6 of 10	3.51%	3 of 6	10.56%
Community control/influence	9 of 10	7.6%	3 of 6	2.22%
Limited regulatory scope	3 of 10	2.34%	1 of 6	1.11%
Resistance of applicant or agency	5 of 10	2.63%	3 of 6	2.78%
<b>Procedural justice/Fair process</b>				
Respect for the process	0 of 10	0%	4 of 6	8.33%
<b>Justice as Recognition</b>				
Respect for community expertise	6 of 10	5.96%	2 of 6	1.11%
Community voice	6 of 10	2.63%	3 of 6	5.56%
<b>Other</b>				
Differing expectations	2 of 10	0.88%	3 of 6	2.78%
Community empowerment	4 of 10	1.75%	1 of 6	0.56%
Building relationship b/n agency and community	3 of 10	1.46%	1 of 6	1.67%

**Note:** This table includes summarizes interview data for codes by percentage of speech acts (within each category) and by the number of speaker that raised the issue. Low-frequency codes, defined as those that accounted for 2% or less of speech acts for both activists/advocates and agency staff and were mentioned by two or fewer speakers, are not reported.

A similar position is adopted by the National Environmental Justice Coalition in its Model Plan for Public Participation (NEJAC, 2000a). The Model Plan includes recommendations for concrete changes in the decision-making process that suggest distributive justice goals, such as encouraging agencies to “[p]romote interagency coordination to ensure that the most far reaching aspects of environmental justice” can be addressed (NEJAC, 2000a, p. 17). However, these recommendations are framed as occurring outside the scope of a single participation process and are not identified as among the “core values and guiding principles” of public participation. In addition, only four states have adopted explicit anti-concentration policies in response to environmental justice concerns: Alabama, Arkansas, Georgia and Mississippi with an additional two states – Maryland and Massachusetts – providing other substantive environmental protections or benefits to environmental justice communities (Bonorris *et al.*, 2010).

Based on the limited focus on specific results among interviewees and national environmental justice leaders and in environmental justice policies, while protection of the public health and environment and broad equality in treatment or environmental exposures are important goals in any individual permitting decision, the public does not see this outcome as a function of public participation alone. Thus, while the public and the regulatory agencies may define the term similarly in the environmental justice context, I propose that distributive justice is not the most important marker for effective or meaningful public participation.

## **B. Situated Understanding of Procedural Justice Goals of Effective Public Participation**

Procedural justice broadly refers to the fairness of decision-making procedures. At minimum, fair processes must be open to and accessible by the affected parties, the decision-

maker must be unbiased, and the final decision must be based on competent and meaningful criteria, including the inputs of public participants to the process (Thibaut and Walker, 1975; Tyler, 1988; Levanthal, 1980).

Seventeen of the 32 states that have adopted environmental justice policies focus their efforts on some method of improving environmental justice community access to or voice within public decision-making processes (Bonorris *et al.*, 2010).<sup>11</sup> Many state-level environmental justice policies require meetings to be held at times and locations convenient for members of the affected community<sup>12</sup> and in language geared toward a lay audience and/or communities with limited English proficiency.<sup>13</sup> Some mandate increased outreach to affected communities, direct notice to stakeholder or earlier involvement in the review process.<sup>14</sup> These changes generally address key barriers to public participation noted in the literature: lack of notice and information about the project, time and mobility constraints, and language or cultural barriers (Laurian, 2004; Cole and Foster, 2001; Checkoway, 1981).

Regulatory agencies appear to have embraced the ideal of procedural justice as real access to public processes and comparable treatment of public concerns. In five of the seven hearings analyzed, agency staff used initial presentations to emphasize that all public comments would be heard and reviewed as part of the agency's final decision-making. As an agency staff member noted in his opening statement in Hearing B:

We have no business making [a decision on the permit], until we hear what you have to say, until we hear the voice of the people....That's why we will stay here

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<sup>11</sup> These states are: California, Connecticut, Illinois, Indiana, Massachusetts, Maryland, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia. (Bonorris *et al.*, 2010.)

<sup>12</sup> The states that specifically mention time and location of public hearings include California, Connecticut, New York, Oregon, and Washington. (Bonorris *et al.*, 2010.)

<sup>13</sup> The states that specifically mention lay-friendly project information or accommodation for communities with limited English proficiency are California, Connecticut, Illinois, Indiana, New Jersey, New Mexico, New York, Pennsylvania, and Tennessee. (Bonorris *et al.*, 2010.)

<sup>14</sup> Other states that require expanded outreach, direct notice or early participation include Alabama, California, Connecticut, Illinois, Massachusetts, Nebraska, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Virginia and Washington. (Bonorris *et al.*, 2010.)

tonight as long as you want, to hear each and every one of you and to hear your concerns. That's why we're going to review every word this young lady is taking down on her stenographic machine. That's why we're going to read and reread every letter you send.

In addition, agency staff interviewed confirmed this focus on real access and comparable treatment, judged by how well the process structure incorporated specific elements deemed important. Four of six agency staff interviewed described good participation processes only in terms of appropriate structure, never mentioning appropriate outcomes. As Administrator A stated, good process is judged by whether an applicant:

has a good setting, a good location for that meeting,. . . provides it at good hours, which may be more than once,. . . provides a setting so that folks can easily get there; so they can get there with babies if they have to. . . that they provide an opportunity for language translation if they need to.

To the extent that agency staff discussed results-oriented measures of good procedure, the focus was on allowing community members to voice their concerns. Administrator E encapsulated this idea when he said "it's important that people get the opportunity to have their say...it gives them some sort of feeling of satisfaction. You know, their concerns might not be legitimate...but at least they got their say."

For the most part, community members appear to have a similar understanding of the structural elements of good or just procedures. Hearing speakers raised procedural defects in approximately 12% of all independent speech acts (76), most frequently complaining of inadequate notice of or access to the public hearings (see Table 4-4). Among the activists interviewed, effective participation was defined in terms of good process in 15% of all separately coded speech acts and was mentioned by every interviewee. Three times out of four, good process was identified by structural elements rather than outcome-related elements, meaning that

the fairness or justness of the procedure was judged separately from the result. For example, as

Activist D noted:

The public hearing that we held was pretty much conducted the way a public hearing ought to be conducted. So even though [the administrative law judge] supported the project, he still ran a very fair public hearing where he let everybody get up and talk. He gave everybody their time.

Activists also stressed the importance of agencies not steering or attempting to steer the discussion, complaining about processes that tried to ensure a particular balance between favorable and unfavorable testimony (Activist E) or recharacterized criticism or concerns in less damaging ways (Activist B, Activist F). In addition, activists and agency staff both recognized the importance of ensuring that a range of voices was heard (6 of 10 activists, 4.68% of speech acts; 4 of 6 agency staff, 7.22% of speech acts) and that participants had the information necessary to participate in the process (7 of 10 activists, 4.97% of speech acts; 3 of 6 agency staff, 4.44% of speech acts).

Activist descriptions of the structural elements of good or just processes, for the most part, corresponded closely to those of the agency staff interviewed. For both groups, the structural elements of good process included holding meetings at times convenient for working people, holding multiple meetings to accommodate diverse schedules, finding meeting locations convenient to and comfortable for community members, ensuring that communities had adequate notice of the proposed project and sufficient opportunities to become involved, and providing access to project information couched in non-technical language. Activist I described fair processes this way:

[In an ideal situation,] you need to be informed about what's going on, like full transparency, what's happening.... You need to be allowed to speak about what, you know, how you see as being affected.... So it's like you need to be informed, you need the ability to speak, you need the ability to even have extra time to submit comments.

However, for many of the community activists interviewed and the speakers at the public hearings analyzed, proper structure alone was insufficient to create “effective” public participation. Non-professional, community-based activists were almost evenly split in defining good process as particular structures providing access or transparency (60% of 45 comments made regarding good process) and as meaningful voice (40% of comments made regarding good process). This suggests that a significant percentage of environmental justice activists hold a second, more robust understanding of procedural justice as meaningful representation (Tyler, 1988) or full and potentially influential voice within the process.

Having a full and influential voice within the established process suggests, at minimum, that community concerns which fall within the recognized framework of review are heard and generate a response. Both agency staff and activists acknowledged agency responsiveness as central to effective public participation. In fact, speech acts that included terms indicating responsiveness, such as “responsive,” “respond,” and “listen” comprised almost a quarter of the statements made by activists in interviews and approximately 19% of statements made by administrators. These statements referred to something more than simply paying attention to the public during hearings, but less than coming to a particular conclusion.

Agency staff and activists demonstrated a significant difference in tone and in the scope of expected action when discussing agency responsiveness. Staff tended to view responsiveness within the procedurally defined bounds of analysis and review, stressing the importance of respecting the process and describing their role as answering individual questions and providing the information necessary to understand or justify agency decisions. Although acknowledging the potential for public input to add new information to the review process, fully 7% of all

statements made by agency staff focused on providing information held by the agency to the community in a comprehensible form. As Administrator D noted:

We may have thought we provided the information to the public, but sometimes you get a clear understanding that either they didn't hear you or you conveyed it the wrong way so they didn't understand it. So you have to take a step back and think about how you can get that information back out to them.

Both staff and activists recognized the importance of discussion or dialogue to ensure that the desired responsiveness and exchange of information. Half of all agency staff interviewed and six of ten activists raised the issue, although it appeared more significant to agency staff (10.56% of all speech acts for agency staff compared to 3.51% for activists).

Activists added a concern that agency staff be willing to think about and respond to relevant data regardless of the source. Activists defined participatory processes as effective where "all parties go into it with a sincere interest in making the best...informed decision possible" rather than treating it as a "dog and pony show[]" or an opportunity to simply "check the public hearing column off" or rebut any challenges or changes to the decision that it has already made (Activist A, Activist C). However, several activists recognized that communities had a responsibility to translate their concerns into terms that agencies understand to be effective even if they need to develop technical expertise or find expert assistance to do so (Activist D, F and I). Activist D and F, in particular, stressed that they were helpful to their community and able to successfully pursue specific interests because of their individual expertise in the areas of concern. In fact, Activist F complained that agency staff and the permit applicant were unhappy that he'd "made the documents accessible to the public." These activists, then, expected the regulatory agency or applicant to actively evaluate and respond to appropriately framed community concerns, rather than simply matching the concern to existing data or evaluation.

In addition, nine of ten activists raised the importance of community control over or influence in the process (8% of all speech acts). This need was recognized by agency staff, but was a less significant part of their discussion of effective participation (2.22% of all agency speech acts). In addition, both groups focused on influence rather than outright control.

Based on these results, I propose that procedural justice, as a criterion of effective public participation, must include both a structural component related to access and a second component of meaningful voice. Under this more robust definition of procedural justice, agencies must ensure that decision-making processes are open to affected parties, be willing to engage in dialogue with community participants, and be open to persuasion when community concerns are translated into traditionally cognizable terms.

### **C. Situated Understanding of Justice as Recognition Goals of Effective Public Participation**

Justice as recognition is the final form of justice identified as important to the environmental justice community and potentially relevant to effective participation. As discussed in the prior chapter, justice as recognition can be defined in two ways: the identity model or social recognition and the status model or institutional recognition. These models of recognition are distinguished by the object of their gaze and external versus internal focus of the remedy.

Social recognition means acknowledging the authentic identity of and according social respect to other individuals across difference. In the environmental justice context, social recognition may mean showing respect for participants within an environmental decision-making process. Schlosberg (2007), for example, ties justice as recognition to instances of individual disrespect, such as calling community members by first names rather than titles or agency staff who talk among themselves during public testimony. Alternatively, social recognition may mean

acknowledging known characteristics of a participant's situated self (Markell, 2003; Fraser, 2000, 2001; Honneth, 2001), such as the fact that "[f]ree time is yet another resource that... the poor have less of" (Activist C). Thus, social recognition may mean providing more conveniently scheduled or shorter meetings to facilitate participation. Because the individual or institution according recognition does not have to change its understanding of itself or its positionality to affirm the recognized other, the focus of social recognition is external.

Institutional recognition, on the other hand, requires both acknowledgment of group-based identities and the structural inequalities attached to those identities that diminish the social or political status of non-dominant group members and internalized change to correct the structural inequalities and create rough equality of social or political position. Because institutional recognition demands both externalized and internalized change, ensuring this form of justice through public participation may require both changes in the way that the agency views its role in the process and structural changes in the review process itself. At minimum, it requires regulatory agencies to be open to changes in project or review process based on the concerns and interests expressed by traditionally disempowered environmental justice communities.

Assessing the situated understanding of justice as recognition, then, requires an evaluation of three issues. These are the type of recognition envisioned (individual respect or structural change), the scope of change required as part of that recognition (external changes only or both external and internal changes), and the object of recognition (individual or group).

### **1. Social recognition as an element of effective public participation**

The tone of interviews with agency staff suggests that they recognized the importance of acknowledging the authentic identity of community members and treating them with respect. This was generally understood as being welcoming to community participants and sensitive to

certain identity-based obstacles to engagement, such as the barriers created by technical language and jargon in hearings and project materials. Administrator A, for example, described with approval an applicant's efforts "to make the public as welcome as possible into the process" and notes the importance of "be[ing] really sensitive to the [affected] communities." Administrator D described a key goal of public participation as helping the community "feel more comfortable [and] have more confidence in what the state's doing and how we're overseeing" the regulated entity. However, these statements do not indicate a willingness to significantly rethink the agency's role in the public process or to remove structural barriers.

For the activists interviewed, with few exceptions, respectful treatment of individual speakers was a secondary concern. Only Activist C specifically mentioned the need for agency staff to pay attention to community speakers, noting that the teenagers he frequently brought to testify at public hearings were sometimes disturbed by agency staff or government officials being visibly occupied with cell phones, papers, or other distractions during public comment periods. Otherwise, complaints about failure to listen did not refer to inattention at hearings, but failure to address concerns raised.

None of the other interviewees or hearing speakers mentioned overtly disrespectful treatment. In the only hearing where agency staff omitted titles in addressing the community, community members returned the gesture, referring to county officials by first name as well. Although a few speakers (17 of 158) sought greater respect from the agency by highlighting individual expertise based on technical training, experience with similar projects or community residence, this was a relatively minor portion of the comments and the effort did not appear attributable to any potentially unrecognized social identity. Instead, these comments appeared to be an effort from lay people to enhance credibility in front of a perceived expert.

## 2. Institutional recognition as an element of effective public participation

As noted in Section II.B, activists and agency staff both view agency responsiveness as central to effective public participation (25% of activist speech acts and 19% of agency staff speech acts). However, the groups understood responsiveness differently. While agency staff defined responsiveness as hearing and answering questions, activists defined responsiveness in terms of openness to public input. However, public input may not fall neatly within the regulatory framework or be compatible with public dialogue expectations. Asking agency staff to truly hear and respond to such unrecognizable concerns or arguments is a form of institutional recognition. The data, however, suggests a clear difference between agency and activist understanding of this justice goal and its relationship to effective public participation. This difference is most clearly seen in the data related to agency responsiveness.

Agency staff interviewed repeatedly indicated that, once community members were welcomed into the participatory process, the agency's active role was focused on answering individual questions and providing the information necessary to understand or justify agency decisions. Five of the six agency staff raised this issue and such statements comprised 41% of all agency staff statements related to responsiveness. Although agency mentioned the potential for changing project design based on community input, fully 7% of all statements made by agency staff focused on providing information already held by the agency to the community.

Administrator D exemplified this focus, stating that:

the main thing in a productive meeting for the most part is DEC understanding the public's concerns and positions and...[t]he public understanding the DEC process and decision-making. You know, we can't always convince people that we made the right decision, but if we can convey how we made that decision and the reasons behind it, I think it goes a long way with the public. And vice versa. You know, we don't always consider everything.

Although Administrator D described the information exchange as two-way, his focus was on ensuring that the community understood the agency's decision, not that the agency understood the community concerns or revisited its assessment in light of those concerns.

Other comments echoed this notion of agency responsiveness as answering questions and directing information to the community. Administrator A equated effective permitting processes with having community questions addressed “straight on” with “incredible responses” rather than being “brushed aside,” even if the community wasn't entirely happy with the final decision. Administrator C described change to “the format in which the information exchange is happening” as a way to make the agency more responsive or better able to answer questions:

these large group meetings aren't conducive at all [we offered] small, you know, either one-on-one or small group discussions where, you know, an interested citizen or a small group can come in and sit down one-on-one with our staff. And have a nice discussion back and forth, get their questions answered. At the end of it feel more comfortable, have more confidence in what the state's doing and how we're overseeing [the regulated party].

Administrator E also identified the central goal of public participation as collecting and answering public questions. Similarly, almost one-third of state environmental justice policies emphasize providing information to or educating affected communities.<sup>15</sup>

In contrast, community activists saw responsiveness as requiring an exchange of information. Activist I described one ineffective agency process as follows:

where they faltered, I think, is that they spent way too much time having agency folks talk about the issues. And then the large amount of community participation, in the meetings that I went to at least, wasn't heard. So you know...they did the advertising, they did the outreach pretty good, they got a lot of people around the table. And then it fell through in letting people talk and communicate.

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<sup>15</sup> The states that include an information or education component in their environmental justice policies are California, Connecticut, Illinois, Indiana, Louisiana, Maryland, Montana, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, Virginia, and Washington. (Bonorris *et al.*, 2010.)

In addition, most of the activists interviewed saw agency responsiveness as including an internal component, meaning that agency staff would revisit their own understanding of the project and adjust the participatory and analytic framework to accommodate community concerns, as necessary. Activists talked about “responsiveness” in close proximity with or through the use of terms like “commitment” to the process or the community, “thinking outside the box”, and “going into [the participation process] wanting to be persuaded” (Activist C). Nine of ten activists raised agency responsiveness in the context of being open to change in the process, the scope of review, or the terms of the project. These comments made up almost 6% of overall statements and 24% of statements within the “agency responsive” code.

Although four of six agency staff interviewed also mentioned flexible responses (4% of overall statements; 32% within “agency responsive” code), they tended to limit the scope of appropriate agency responses. For example, Administrator F emphasized that a “draft permit is not a final decision. It’s a preliminary decision based upon the record at that time. So it could change based upon public input.” However, in describing a particularly controversial project with a vocal local opposition, Administrator D noted that “we made the decision to involve the public...to hear...what they wanted to see in the design,” but that “it’s still up to the engineers to design the project.” The most frequent references to agency openness came from Administrator A, who was describing openness to changes in the outreach and notice process. Thus, the agency staff’s idea of openness and flexibility appears to limit the appropriate type and scope of public input and to be constrained by the regulatory process.

Activists also described agency responsiveness in terms of answering questions, but these responses were qualitatively different than those given by agency staff. First, these statements tended to be complaints about ignoring or failing to give serious consideration to relevant

questions. Activist D, for example, repeatedly expressed frustration at agency failure to consider a range of related projects occurring within the same time frame and the same community. In three of the hearings analyzed, speakers complained that the agency would not address concerns or answer questions about historical overexposure in the community or the presence of particularly vulnerable populations. If new concerns were to be taken seriously, community members were expected to reframe these concerns in terms easily cognizable by the agency or even to develop solutions on their own.

Activist A complained of agencies placing the burden of solving environmental problems on the affected community itself, rather than treating the issues as important enough to invest their own time and expertise in finding solutions. As he described it:

If I were to come in as an EJ person and say you need to address. . .[y]ou know, power plant siting decisions need to address the cumulative impact of other environmental burdens. Okay, well, we'll think about that, but first tell us how you do that. That's very different than an agency saying, okay, addressing environmental justice is core to our mission and let's put our resources and time behind figuring out a way that we can modify our permitting process to account for existing cumulative burdens in the community and how that affects public health and other outcomes.

In the national context, environmental justice activists see this internal agency adjustment going even further and argue that regulatory agencies should view themselves as in collaboration with affected communities to define the scope of the problem and develop solutions (NEJAC, 2000a, 2000b).

Agency staff either did not see this rigidity in the scope or structure of the participatory process or did not view it as a problem. Agency interviewees expected community participation to conform to set processes, with four of the six administrators interviewed noting the importance of respecting the agency-defined process by, for example, raising concerns at the appropriate time. In fact, statements demanding respect for process accounted for 8.33% of all

unique statements made by administrators. Further, none of the administrative staff interviewed discussed the need to expand their review framework to capture issues surfaced by community comments. To the contrary, Administrator F noted that not every comment raises a concern that can be addressed within the regulatory scope, while Administrator D described a successful participation process as one where the agency learned about community interests and understood “that we might be able to accommodate some of those interests in our decision-making as we move forward.” State reform efforts have largely left this concern unaddressed, as only six state policies specifically address the regulatory agency’s duty or ability to consider and address public comments.<sup>16</sup>

While agency staff acknowledged that members of the affected community or the affected community itself must be recognized as valuable participants in the process, this recognition does not extend to community perspectives or concerns not framed for ready response under applicable regulations or technical review standards. As Figueuroa (2003) notes, a failure of recognition can render “critical cultural perspectives. . . socially and politically invisible” (p. 30). The environmental justice community, on a national level, has expressed concern with this stance. In its recommendations on setting fish consumption advisories, the National Advisory Council on Environmental Justice argued that the discussion and analysis should be framed by the “stories told from the perspectives of those on the ground” without reconfiguration to “fit into the bins and categories created by environmental laws and regulations” (NEJAC, Nov. 2002, p. 1).

The NEJAC report acknowledged the utility of translating community concerns to make their relevance to agency decision-making more apparent. However, such changes necessarily

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<sup>16</sup> The states which create an ombudsman or advocate position to help ensure that community complaints are considered by the regulatory agency or impose specific requirements for agency review of and response to comments are Delaware, Idaho, New Mexico, Oregon, Texas, and West Virginia. (Bonorris *et al.*, 2010).

entail a loss or alteration of meaning, through exuberances or deficiencies in translation (White, 1990). Because of the risk of mistranslation, misunderstanding, or flattening of multiple and interrelated concerns, “it is crucial that agencies also work to *hear* the stories in their original, whole form and to consider what these stories have to teach them – how they might serve to reframe agencies’ approaches altogether” (NEJAC, 2002, pp. 1-2).

### **3. Defining the object of recognition: individual or community**

This split between social and institutional recognition is underlined by the object of recognition suggested by activists and administrators. As discussed in the previous chapter, although social recognition may require acceptance of and respect for group-based differences, it is best understood as accorded to the individual since the authentic identity being acknowledged may be based on multiple group memberships. Institutional recognition is best understood as accorded to the group despite individual benefits, since the structural impairments and changes in status are based on group membership. Environmental justice communities were focused on such group-based rights.

Speakers in the hearings analyzed complained of a lack of respect for the community’s role in the process and repeatedly raised community-based concerns, such as project incompatibility with community character and project impact on the long-term sustainability of the community. Almost 25% of comments made were arguably outside the process scope or beyond the scope of formal review. Two of the most common “beyond the scope” concerns raised were the sustainability of a proposed environmental solution or of the community if the proposed project was approved and the compatibility of the proposed project with community character. Many speakers emphasized the historic mistreatment of community (more than 5% of distinct speech acts), again demanding respect on the community level rather than as individuals.

From a practical perspective, community activists stressed the importance of having “allies at the table” (Activist D) and the strength of a shared community voice.

Several activists also raised concerns about individuals or organizations being singled out because of their activism and cast into the role of community representative. Despite the potential to promote their individual interests, activists were uneasy with this role and advocated for recognition of the broader group rather than individual participants. Activist D, for example, described her discomfort with acting as the voice of the community this way:

You get to be known as, I don't know, the head of [a group] or whatever and there are lots of other voices. And there are lots of other points of view even within [that group]. And I've got mine and [she] has got hers and [she] has got hers.... And they're different voices. And they're from very different perspectives.

Activist C described meetings between his organization, other community groups, and a regulatory agency on an issue of where the agency seemed to see them “as the public because there were a lot of groups [in the discussion]. But we said no...we try to represent our neighborhoods, but there's nothing that gives us the power to say that we do.” Activist I argued that agencies have to expand outreach to “places where the most people congregate and the venues where people incorporate into their daily lives” rather than simply “calling up a community-based organization and saying, hey, can you come to this meeting.” For these interviewees, their participation alone or as representatives of their organization was inadequate; truly legitimate processes were those that engaged the community as a whole. As Barber (1983) noted, “[c]ommunity without participation merely rationalizes collectivism, giving it an aura of legitimacy. Participation without community merely rationalizes individualism, giving it an aura of democracy” (p. 155).

Further, where hearing speakers or interviewees tried to define their communities, they did not simply invoke geographic boundaries. Activist J, for example, complained that the

participatory process did not differentiate between the “environmental justice” community, defined as most affected and least empowered, and the more privileged residents of the affected area. For participatory processes to accord a meaningful form of recognition, therefore, they must accord special respect or place to the affected community, defined by shared ethnic or cultural norms and political status as well as geography.

While New York’s Environmental Justice policy accords low-income and minority communities greater opportunities for engagement, agency staff continued to discuss outreach and interaction in terms of individual participants or defined community organizations rather than the community as a whole. Administrator A stated that, under the Environmental Justice policy, agency staff “go even deeper, go to the community level [and I] look for these civic organizations, . . . churches, . . . [l]ocal advocacy groups we will solicit to find out what concerns they have.” Although Administrator B suggested that the expanded participation was intended to draw “the people” (rather than just some people) into the permitting process, good outreach as defined by Administrator F was limited to “get[ting] the word out and . . . facilitat[ing] people being able to comment if they want to.” None of the administrators interviewed raised the idea of removing barriers to or helping communities find ways to express their shared voice. When asked for an example of a meaningful participatory process, for example, Administrator C described meetings that included opportunities for one-on-one or small group discussions between community members and agency staff.

This focus may be explained in part by the legal structures that provide standing to affected individuals or defined organizations, but not to more nebulous groupings such as neighborhoods or communities. Agency staff may also be hampered by a lack of knowledge regarding process design, particularly identifying and recruiting informal opinion leaders who

might be able to expand participation. The difficulty of engaging at the community level or facilitating broad community involvement and the development of a genuine communal voice are also likely causes of this mismatch between the activists' focus on true community voice and the agency's focus on simply increasing the number of voices heard from the community. The differential understanding of the object of recognition, however, remains a potential barrier to public acceptance or legitimacy of environmental decision-making in environmental justice communities.

Taking these comments as a whole, I propose that activists have embraced a form of institutional recognition, defining meaningful recognition as incorporating not only respect for the communities marginalized by structural inequalities, but for their role as political actors and, therefore, their expressed concerns or interests. In other words, community activists demanded institutional recognition or acknowledgment of institutional barriers to equal treatment of critical community perspectives and direct action to remove those barriers and render these concerns politically visible. Agency staff, on the other hand, are focused on a form of social recognition. For agency staff, effective participation processes are intended to be welcoming of and respectful to community members, facilitating their inclusion in existing structures rather than revamping those structures – and the agency's role within them – to address structural inequalities affecting the environmental justice community.

#### **D. Considering Outcome or Empowered Participation as Primary Goals of Public Participation**

Although the focus on procedural justice and justice as recognition may be sensible from a theoretical perspective, some might argue that the community data reflects more practical or grounded concerns. For example, complaints from hearing speakers and activists of being

unheard or having relevant concerns ignored could be interpreted simply as complaints about an agency's final decision. Communities may view their objections to a particular decision as so serious and unanswerable that agencies would be cast as unresponsive and unwilling to consider community concerns whenever the final decision was not the one preferred by community members. Alternatively, communities may only perceive public participation processes as meaningful or just, where the affected community is granted some form of empowerment or autonomy. In either case, community members might raise comparable complaints about agency action. However, viewing the interview and hearing transcripts as a whole, these interpretations do not provide a complete explanation for the data.

One alternative way of viewing the data is that communities are strongly vested in a particular outcome and will only be satisfied with a permitting process where that result is achieved. If this were true, such complaints should be heard whenever a controversial facility is sited or the community does not receive its preferred result. However, in two of the hearings, participants praised aspects of the participatory process despite a final decision that placed a polluting facility in their community. For example, Activist D noted that "in one sense, it was a good process. Because...even though [the agency] unilaterally built that plant...he bought extra land...put the best odor control in that money could buy." Activist F also praised the process as fair, even though the decision went against the community.

In addition, rather than focusing on results alone, community activists sought a sound explanation for the agency decision. Activist I exemplified this position when she stated that participants need "a response to your comments and then you need to know why or why not this is going to be implemented." The limited importance placed on distributive justice also suggests that outcome is not a full explanation for community dissatisfaction with participatory processes.

This aligns with research by Tyler (1984, 1988), which found that unfavorable decisions were not universally or even disproportionately regarded as illegitimate and that perceived procedural fairness was more important than distributional impact. As Activist H noted, “you can’t do a bad process and get the right result and still have environmental justice, but you may be able to get the wrong result with good process and have environmental justice.”

Another results-oriented interpretation of the data might characterize community dissatisfaction with public participation as a desire for autonomy, invoking the notion of “empowered democracy” as proposed by Fung and Wright (2001). Fung and Wright (2001) define “empowered democracy” as participatory processes that include community members in making decisions or recommendations that control agency actions. Certainly the Principles of Environmental Justice include goals of community autonomy and self-determination, which resonate with the idea of empowered democracy (Principles, 1991). However, calls for direct control or even equal participation in decision-making within the data were rare. Some activists praised participatory processes structured to reach decisions. For example, Activist C noted that a participatory process is effective “where there is room for it to be effective...[where it is structured so that] whatever [comes] out of [the process] is the decision” and Activist F spoke favorably about a charette described as a “community visioning process,” that resulted in a community development plan. However, activists more frequently described agencies being willing to consider the full range of community concerns (Activist G), to actively look for ways to address issues that might be outside the normal scope of review (Activist B, Activist I) or to incorporate those meta-concerns in future discussions (Activist I).

Further, empowered democracy processes require on-going participation, member accountability, and a commitment to deliberation (Fung and Wright, 2001), which may be

beyond the capacity of many members of environmental justice communities. Commitment to such processes require some individuals or organizations to step forward as the voice of the community. However, as noted above, the activists interviewed rejected this role. For example, when faced with multiple invitations to represent her community in environmental justice-related meetings and boards, Activist D regularly asked to invite additional community members or designate alternatives. When invited to be part of closed discussions on an environmental benefits plan, Activist C's organization challenged the structure and called for an open community charette. Thus, activists in this study do not appear to be calling for particular outcomes, or for community control of the decision. Rather, they are simply calling for communities to be allowed to speak for themselves and for agencies to actively listen to community concerns and work to make them politically visible.

## **VI. Conclusion**

Public participation, in general and within environmental justice, in particular, is critical to furthering underlying notions of justice. Because of the relationship, I chose to develop measures of the effectiveness of public participation that were grounded in three primary models of justice: distributive justice, procedural justice and justice as recognition. Based on this preliminary analysis, it seems that the situated understandings of effective public participation and its relationship to specific forms of justice differs among participants in environmental justice permitting processes, environmental justice advocates and community activists (“community”) and agency staff.

While activists and agency staff share a common definition of distributive justice, focused on adequate environmental protection of all communities, distributive justice is not viewed as tightly tied to or directly stemming from effective public participation. Community

members might disagree with agency staff over adequate levels of protection or appropriate resolution of particular decisions, but neither group expected participation alone to resolve this difference. Activists and agency staff also define procedural justice and its relationship to public participation similarly. Specifically, procedural justice is viewed as tightly tied to public participation and is defined by access to and voice within participatory processes.

However, activists and agency staff diverge on their situated understanding of justice as recognition. Although both groups recognize a social recognition goal to public participation, there is less agreement on institutional recognition. Social recognition in this context is defined as acknowledgment of the situated identity of and demonstrated respect for individual community participants. For community members, institutional recognition is also an important goal of public participation. In this context, institutional recognition is defined as the elimination of structural barriers to full participation by individuals and groups and internalized changes to the agency itself or its understanding of its role in the process. These structural barriers include both barriers affecting access and barriers regarding language and scope of review that may render the culturally based concern or interests of the affected community invisible in the standard process. Given these divergent definitions of justice as recognition, environmental justice communities and agency staff may have significant difficulty making or measuring progress toward achieving this final justice goal.

In subsequent chapters, I develop specific measures of effective participation based on the preliminary data collected in this chapter and the existing literature. These measures reflect the differing perspectives of community activists and agency staff and will be applied to the permitting processes selected for my case study to determine whether the enhanced public participation processes required under New York's Environmental Justice Policy result in more

effective public participation overall in terms of achieving legitimate or publicly acceptable decisions. By incorporating the situated understandings of effective public participation, my analysis may allow a more nuanced assessment of participation processes and help explain varying reactions to or acceptance of such processes and related decisions. This more targeted analysis should help to define which, if any, of the defined justice goals the enhanced public participation processes are able to further. Finally, by singling out justice as recognition markers, this analysis may provide unique insights into the potential for enhanced public participation to address environmental justice specifically, given the unique role of recognition in the environmental justice movement.

## **Chapter 5: Research Design, Methods and Measures**

This portion of the research is a comparative case study of permitting processes that triggered New York’s EJ policy and those that did not. Under the EJ Policy, permit applicants must develop and implement “enhanced public participation plans” for any proposed major projects or major modifications to existing facilities that are likely to affect an “environmental justice” community (CP-29, § V.A). Any urban community with a minority population of at least 51.1%, any rural community with a minority population of at least 33.3%, and any community where at least 23.59% of the population are below the poverty line are defined as environmental justice communities in which the EJ policy applies (CP-29, §§ III.A, V.B, C, D). Otherwise comparable communities should fall on either side of this demographic demarcation, creating the rough equivalents of “treatment” and “comparison” cases and maximizing the likelihood that observed differences in key measures or outcomes can be attributed to the enhanced participation process. Thus, the EJ policy creates a naturally occurring experiment, which can readily be examined through a comparative case study design. In this chapter, I develop measures of effective public participation, justify case selection, and describe data collection and analysis.

### **I. Development of Criteria and Measures of Effectiveness**

Although the links are often not made explicit, public participation policies are grounded in and intended to support particular models of democracy and to promote particular notions of justice. As discussed in Chapter 2, public participation is fundamental to both traditional liberal and deliberative democracy, providing the necessary express or implied public consent to governmental actions and legitimizing final decisions. One of the central goals of this research is

to develop general criteria for and specific measures of the effectiveness of public participation that are derived from and explicitly tied to theories of democracy and justice. The two democracy models described earlier – liberal democracy and deliberative democracy – are both aimed at achieving some balance of distributive justice, procedural justice and/or justice as recognition and both can be used as a means of reaching environmental justice. Focusing on the most proximate theoretical link – theories of justice and legitimacy – avoids some of the problems created by overlapping goals. In addition, the situated definitions of the justice goals of effective public participation facilitate developing measures tethered to specific justice norms.

Based on the hearing transcripts and interviews analyzed in Chapter 4, I propose that effective public participation particularly within environmental justice communities is perceived as most tightly tied to procedural justice, which can be understood as meaningful access to and voice within a fair decision-making process, and justice as recognition. Recognition refers to either social recognition, meaning acknowledgment and respectful treatment of individual participants within the existing process, or institutional recognition, meaning acknowledgment of institutional or structural barriers to participation by specific communities and a willingness to adjust procedural expectations to facilitate full participation by these groups. Distributive justice, although not viewed as achievable through participatory processes alone, is measured in the environmental justice context by more protective outcomes which provide healthy and sustainable communities for all involved. Finally, legitimacy is tied to public acceptance of the process and/or the final decision as fair, supportable and binding.

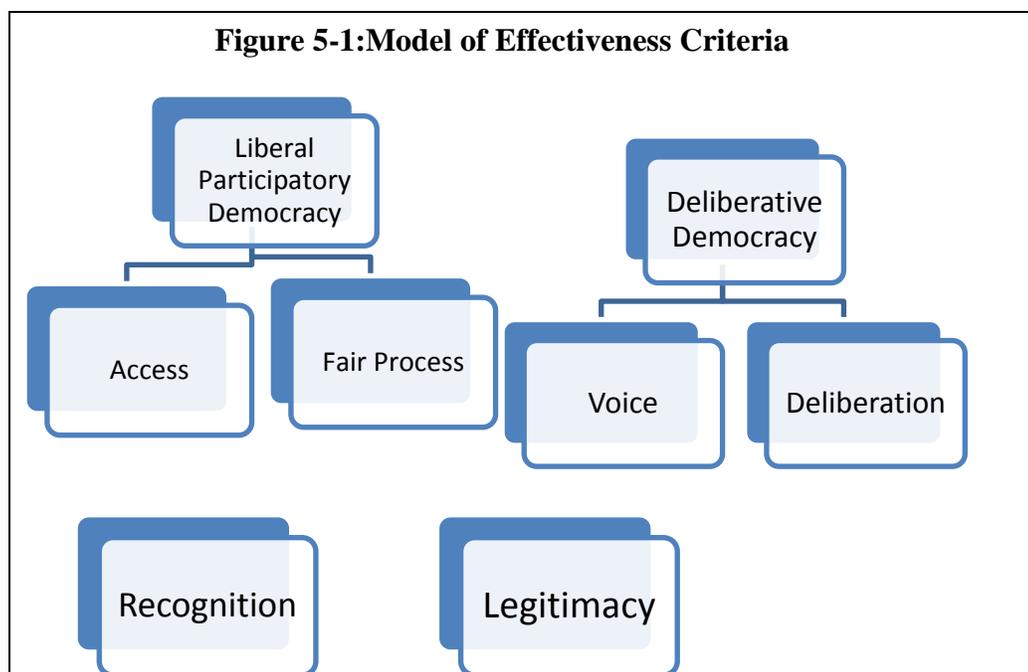
From this understanding, I defined six criteria of effectiveness in public participation: access, fair process, voice, deliberation, recognition and legitimacy, which are described in detail in Table 5-2. These criteria can be divided into four groups, two of which can be used to

differentiate between underlying models of democracy. The first group, access and fair process, are derived from the meaningful access prong of procedural justice and are most similar to the structural criteria applied in earlier studies (*see, e.g.*, Berry *et al.*, 1997; Beierle and Konisky, 2000) and are primary markers of participatory liberal democracy. The second group, voice and deliberation, are derived from the voice prong of procedural justice, are most similar to outcome-focused and social goal criteria, such as public influence (Simrell King *et al.*, 1998; McKinney and Harmon, 2002; Buck and Stone, 1984) or social learning (Webler *et al.*, 1995), and can be used as markers of the success of deliberative democracy.

The final two criteria stand on their own. Recognition, defined as social and institutional recognition, is not tied to a specific democracy model but is a unique marker of success in terms of achieving environmental justice. Recognition is also unique in terms of earlier measures, most of which did not touch on this justice theory. Webler *et al.*'s (1995) moral development measure may be the most similar with its focus on sense of self-respect, but it entirely misses the institutional aspect. The last criteria of effectiveness, increased legitimacy, is a fundamental goal of any model of democracy or justice. Similar measures have been applied in most if not all earlier studies.<sup>17</sup> Rather than helping to determine which justice or democracy goals, if any, are being advanced by New York's EJ policy, measures of legitimacy may be helpful in understanding the relative importance of the other criteria. In other words, if increases in one or more of the other criteria are linked to increases in legitimacy, this strongly suggests that these criteria are key markers of the effectiveness of public participation. See Figure 5-1 for a visual model of these criteria.

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<sup>17</sup> Some of the comparable measures include participant satisfaction with the outcome (Coglianese, 2003); willingness to participate in future processes, reduced opposition or increased support (Simrell King, 1998, Beierle and Konisky, 2000; McKinney, 2002), and restoring trust in government (Beierle and Konisky, 2000).



Because these criteria are meant to be generalizable to a wide range of decisions, I did not define specific criteria tied to distributive justice goals. Criteria such as improved substantive quality (Beierle and Cayford, 2002) or competence of final result (Webler *et al.*, 1995) have been applied in other studies. However, the specific measures used, such as cost effectiveness, joint gains, positive public opinion, researcher assessment (Beierle and Cayford, 2002) or expert assessment (Webler *et al.*, 1995) reflect a particular understanding of appropriate outcomes that may not be shared by the affected public or the agency. Further, determining whether a given result provides the protective outcomes or healthy and sustainable communities that are the goals of the environmental justice movement requires technical expertise and long-term data that were not available in this research. For that reason, my evaluation focuses on procedural justice and justice as recognition goals.

These criteria are only reasonable measures of New York's Environmental Justice Policy if they are compatible with its goals. The EJ Policy does not have an explicit statement of goals,

but the structure of the policy, the elements included, and the supporting documents provide some indicators. The Policy was developed, in large part, from the recommendations of an Environmental Justice Advisory Group formed by DEC in 2000. The Task Force submitted its recommendations in 2002 and noted that they were “intended to ensure that DEC’s environmental permit process and other programs are open and responsive to environmental justice concerns. The primary focus is to increase awareness of and access to the permitting process and to encourage dialogue between the permit applicant and the affected community” (EJ Advisory Group, 2002, p. 3). This goal is reflected in the enhanced public participation plan requirements and in several other provisions applicable to DEC itself.

The enhanced public participation plan facilitates public access by emphasizing expanded and tailored notice and outreach and early opportunities for community engagement. Similarly, the provisions of the EJ policy which fall on DEC facilitate meaningful public access and input to the process and prepare the agency and applicant to better engage in discussions with affected communities. To expand access, DEC must make technical and permit information more publicly accessible (CP-29, §§ III.B.1 and 11) and to seek greater financial and technical support for environmental justice communities (CP-29, § III.B. 12). To facilitate dialogue, DEC must educate applicants and staff about environmental justice issues (CP-29, §§ III.B.6, 7 and 9) and develop methods to better assess potential environmental impacts of new facilities on environmental justice communities (CP-29, §§ III.B.2 and 14). In addition, DEC is explicitly directed to promote alternative dispute resolution between the community and the applicant (CP-29, §§ III.B.5, V.L). Recommendations that were not adopted by DEC focused on more substantive process and review changes, including issuing notice when permit applications are received rather than after they are deemed complete, developing a range of specific outreach

mechanisms for projects that affect environmental justice communities, and making the environmental review more holistic by, for example, including air pollution from truck traffic associated with a new facility in the environmental analysis (EJ Advisory Group, 2002).

Considering the terms that were included and those that were rejected, New York's EJ policy appears to be focused on the criteria of access, voice and, potentially, deliberative dialogue. Increases in social recognition may be a secondary effect of the targeted notice required to improve access and, because the policy addresses permitting decisions that have been particularly controversial in the past, legitimacy may be enhanced. The policy does not require changes in the decision-making process or the agency's role in that process, effects on fair process or institutional recognition are likely to be incidental or secondary.

The six proposed criteria are further supported by my initial data analysis. As indicated in Table 5-1 below, the defined measures were relatively evenly represented within the coded statements in interviews, transcripts, written comments and other case-related documents analyzed for this portion of the research. This suggests that the criteria resonate with community members, applicants and the regulatory agencies. Again, fair process was the least referenced criteria, suggesting that it may be viewed as less tightly tied to public participation than to the broader category of public and agency review. Recognition separated into its component parts was also referenced at relatively lower rates. However, the importance of fair process in the theoretical literature and the importance of recognition in the environmental justice literature justify their continued inclusion as measures in this research.

**Table 5-1: Distribution of Coded Data by Effectiveness Criteria**

Criteria	Comparison Cases			Environmental justice Cases		
	All	Community	Applicant or Agency	All	Community	Applicant or Agency
<b>Access</b>	17.82% (116)	18.58% (89)	15.70% (27)	17.76% (213)	15.36% (131)	23.70% (82)
<b>Fair Process</b>	10.75% (70)	13.57% (65)	2.91% (5)	8.67% (104)	11.61% (99)	1.45% (5)
<b>Voice</b>	18.59% (121)	15.66% (47)	26.74% (46)	12.43% (149)	11.84% (101)	13.87% (48)
<b>Deliberative Dialogue</b>	10.14% (66)	9.81% (76)	11.05% (19)	17.18% (206)	15.36% (131)	21.68% (75)
<b>Recognition</b>	17.67% (115)	15.87% (53)	22.67% (39)	16.43% (197)	10.90% (93)	30.06% (104)
<b>Social Recognition</b>	8.91% (58)	11.06% (23)	2.91% (5)	5.84% (70)	3.87% (33)	10.69% (37)
<b>Institutional Recognition</b>	8.76% (57)	4.80% (23)	19.77% (34)	10.59% (127)	7.03% (60)	19.36% (67)
<b>Legitimacy</b>	11.06% (72)	14.61% (70)	1.16% (2)	12.01% (144)	14.42% (123)	6.07% (21)
<b>Total</b>	651	479	172	1199	853	306

**Note:** Because some coded references fell outside these six criteria, the percentages in each category may not equal 100.

Because the six primary criteria refer to broad goals, each is further divided into specific measures and sub-measures, which were used as pre-defined codes in the data analysis in this portion of the research. These measures and sub-measures were refined through an initial round of interviews and a double coding exercise intended to check for consistency and clarity. After data was analyzed and coded, measures that could not be quantified based on the available record were eliminated. The final measures and sub-measures, sorted by criteria, are described below and summarized in Table 5-2.

Access, the first criterion of effectiveness, means a realistic opportunity to become involved in the public discussion of the proposed project. This criterion is defined through three measures focused on practical means of engagement – notice (source of notice, perceived adequacy of notice, and documented outreach efforts), accessible meetings (perceived

accessibility and documented efforts to make meetings accessible), and accessible information (primary source of information, perceived accessibility of information, and documented efforts to make information accessible) –and two measures of outcome – number of participants (number of hearing attendees/speakers, number of written comments, mailing list size) and range of voices heard (participant demographics, perceived representativeness).

The second criterion, fair process, means transparency of and consistent treatment within the process. This criterion is interpreted using three measures of community perception – agency competence/lack of bias (perceived competence, perceived bias); applicant bad faith (perceived bad faith, historical non-compliance/poor community relations, refusal to answer questions); equitable treatment (perceived inequities in treatment over time or in comparison to other areas) – and one objective measure – consistent process (deviations from standard review process).

The third criterion, voice, means the opportunity to be part of and influence the established decision-making process. This criterion was assessed using two measures of community perception – full voice (perceived ability to speak fully) and influence (perception of influence over process/decision, perception that decision was already made) – and three objective measures – access to decision-makers (perceived access, structural access, and actual response), addition of information (relevant concerns surfaced, new information added through comments), and changes to project or review process which respond to community concerns within established parameters.

Deliberative dialogue is defined as interactive engagement with project-related information. This criteria was assessed using one mixed measure – dialogue (observable instances of discussion between public and agency, perception that questions were answered or that concerns were resolved) – and two objective measures – public justifications (reliance on

broadly accepted concerns, countered by exclusive reliance on personal experience/regulatory compliance or reliance on technical or bureaucratic language), and understanding of opposing interests (ability to explain interests of public and/or applicant).

Recognition refers to both social recognition and institutional recognition. The specific measures of social recognition were individual respect (demonstrated respect through use of titles, lack of dismissiveness, paying attention) and welcoming of individuals (adding individuals to mailing/e-mail lists, direct notice to individuals). Institutional recognition was defined using two objective measures – community respect (direct notice/outreach to community organizations, community-specific adaptation of notice/outreach, and adoption of community-developed terminology) and accommodation of community concerns (community-driven analysis, expanded review scope, engaged explanations versus reliance on record/general reassurances/platitudes, and non-routine permit/process changes or changes outside the usual regulatory scope). Recognition is most tightly tied to achieving environmental justice and can be understood as making room for voices that are typically excluded from deliberation to be heard.

The last criterion, legitimacy, is defined as public acceptance of and willingness to abide by the decision-making process and the final decision. This criteria was assessed using three primary measures: process satisfaction (self-reported satisfaction, perceived need for change, willingness to participate in the future, and perceived futility of participation), decision satisfaction (self-reported satisfaction, continuing complaints, willingness to appeal/protest, and actual appeal/protest), and overall trust in government (self-reported trust in government and levels of community participation). Again, legitimacy is a goal shared by both underlying democracy theories. A summary of the specific measures within each criterion is included in Table 5-2, incorporated below.

**Table 5-2: Measures of Effective Public Participation**

<b>I. Access (PJ/AD)</b>	<b>Notice</b>	<b>Times/Places</b>	<b>Accessible information</b>	<b>Number of participants</b>	<b>Range of voices</b>
	Initial source of information	Perceived accessibility	Source of information about project	Number of written comments filed	Demographic composition of participants (race/ethnicity; class; prior participation)
	Documented outreach	Documented efforts to set convenient meetings	Perceived accessibility of information	Number of speakers and attendees at public hearings	Perceived representativeness of participants
	Perceived adequacy of notice		Documented efforts to make information available	Number of names on mailing list	Range of concerns, issues expressed
<b>II. Fair Process (PJ)</b>	<b>Agency competence/ lack of bias</b>	<b>Applicant bad faith</b>	<b>Equitable treatment</b>	<b>Consistent process</b>	
	Perceived agency bias or favoritism toward applicant	Perceived applicant bad faith	Perceived inequitable treatment over time or compared to others	Deviations from standard procedures	
	Perceived agency steering of comments	History of non-compliance, poor community relations			
	Perceived agency competence	Refusal to answer questions			

Table 5-2, Continued:

<b>II. Voice (PJ)</b>	<b>Full voice</b>	<b>Influence</b>	<b>Access to decision-makers</b>	<b>Information added</b>	<b>Changes to permit or process</b>
	Perceived ability to speak freely and fully	Perception of influence	Perceived access to decision-makers	Relevant concerns surfaced	Changes to review process responsive to community concerns
		Perception that decision already made (counter)	Structural access to decision-makers	New information added	Changes to permit responsive to community concerns
			Direct responses by decision-makers		
<b>IV. Deliberative Dialogue (PJ)</b>	<b>Dialogue</b>	<b>Public justifications</b>	<b>Understanding of opposition</b>		
	Discussion between agency and public	Reliance on broadly accepted public concerns	Increased public understanding of applicant interests		
	Answers provided to public questions	Exclusive reliance on personal experience (counter)	Increased agency understanding of community concerns		
	Public concerns resolved	Exclusive reliance on regulatory compliance (counter)			
		Reliance on technical or bureaucratic terms			

Table 5-2 Continued:

<b>V. Recognition (JR)</b>	<b>A. Social recognition</b>		<b>B. Institutional recognition</b>		
	<b>Individual respect</b>	<b>Welcoming individuals</b>	<b>Community respect</b>	<b>Accommodation of community concerns</b>	
	Demonstrated respect (use of titles, lack of dismissiveness, etc.)	Adding individuals to mail/e-mail lists	Direct notice/outreach to community groups	Community-driven analysis	
		Direct notice/outreach to individuals	Community-specific notice, outreach	Expanded scope of review	
		Translation services	Use of community terminology	Engaged explanations	
				Non-routine changes to permit or process	
<b>VI. Legitimacy</b>	<b>Process satisfaction</b>	<b>Decision satisfaction</b>	<b>Trust in government</b>		
	Self-reported satisfaction	Self-reported satisfaction	Expressed levels of trust in government		
	Perception that change is needed	Continuing complaints	Community participation (pre- and post-process)		
	Willingness to participate in future processes	Actual or planned appeals/protests			

## II. Case selection

As the measures were being developed, the cases to be reviewed were also being chosen. Typically, case study research focuses intensively on a single example of the phenomenon of interest or a small fraction of the population of interest (Yin, 2003). According to the New York Department of Environmental Conservation, between six and ten enhanced participation plans have been completed under New York's EJ Policy each year since its issuance in 2003, providing a data pool of between 36 and 60 environmental justice or "treatment" cases during the case selection phase. Given this limited pool, I chose two environmental justice cases and two comparison cases. To ensure that the cases were roughly similar with respect to other characteristics, I limited my search to permitting processes in urban areas where the EJ policy was triggered based on race. I looked for cases where the minority population was between 41.1% and 61.1% of the overall population to minimize demographic differences between the comparison and environmental justice cases. In addition, I planned to match the cases by the type of permit sought, the likely adverse impacts on the host community, and the history of community relations with the permitting agency and make an effort to match communities based on economic status and racial/ethnic mix.

DEC does not maintain a central list of permit applications that have or may trigger the EJ Policy. To identify cases, I consulted DEC field staff in regions that include urban areas and/or significant minority populations,<sup>18</sup> DEC's Environmental Justice Coordinator, and community activists and I conducted targeted searches of DEC's database of completed and pending permit applications. However, because DEC's EJ staff are not always consulted before an Enhanced Public Participation Plan is implemented, finding on-going cases was difficult. For

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<sup>18</sup> Regional staff consulted were from Region 1, which includes the New York City area; Region 2, which includes the New York suburbs; Region 4, which includes Albany; Region 6, which includes Utica; Region 7, which includes Syracuse; Region 8, which includes Rochester and Region 9, which includes Buffalo.

that reason, I chose to study only completed permitting processes. A short list of nine potential Environmental Justice cases was identified. I assessed the suitability of each potential case using on-line resources and, in five cases, Freedom of Information Law (FOIL) requests. Potential cases were discarded if the applicant did not fully comply with the EJ policy, if the project would not have significant or obvious effects on the host community, or if there was essentially no public participation in the permit review.

The demographics of the area surrounding each potential case were assessed using GIS software. The “affected area” was defined as the one-mile radius around the facility.<sup>19</sup> A census tract map of the county in which the facility was located was populated with demographic data on race and ethnicity from the 2000 census, which was the data most relevant to the time period of the permitting process. For purposes of this analysis, any people who self-defined entirely or partially as African American, Hispanic, Asian, Native American, Pacific Islander or Other Minority were considered minorities. The non-minority population was defined as non-Hispanic whites and calculated by subtracting the minority population described above from the total population. I used GIS software to map population demographics within the study area.<sup>20</sup>

Potential comparison cases were identified using similar methods. Although both environmental justice cases were located in New York City, I extended my search for comparison cases to other urban areas to capture the widest possible range of comparison cases and to deal with the relatively broad application of CP-29 within the New York metropolitan area. Given DEC’s cautious application of the EJ Policy, which requires an enhanced public

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<sup>19</sup> The choice of a one mile radius is based on prior environmental justice research that used this distance (Mohai and Bryant, 1992), rough neighborhood boundaries within the urban area under study and the likely impacts of the facilities under study (*see, e.g., Been, 1994*).

<sup>20</sup> Where the study area included only a portion of a census tract, which was the unit of analysis used, a portion of the population of that divided tract was included in my population count. The relevant proportion was calculated using the ratio of the area of each census tract within the buffer to the area of each census tract as a whole. For example, if half the census tract fell within the buffer zone, the population within each relevant demographic category within the buffer was also assumed to be halved.

participation process when any census block group “fall[ing] substantially” within the area affected by a proposed project meets the definition of an environmental justice community (CP-29, § V.B.2), almost all new major permits and major permit modifications within the New York metropolitan area triggered the EJ Policy, limiting the pool of comparison cases. As a result, some modifications were required to the selection criteria for comparison cases.

Using the criteria described above, two permitting processes, designated as Environmental Justice Case 1 (EC1) and Environmental Justice Case 2 (EC2) and both located in Brooklyn, were selected as the “treatment” cases. Both projects generated sufficient levels of public involvement to allow meaningful study and both were recommended by DEC staff as examples of proper implementation of the EJ Policy. A map indicating the location of these facilities and the demographics of the surrounding areas is shown below as Figure 5-2. Comparison cases (CC1 and CC2), located in New Jersey and in Manhattan respectively, were chosen based on the criteria described above. Table 5-3 provides a side-by-side comparison of the cases.

The first Environmental Justice case involved the siting of a solid waste handling facility. A map showing the demographics within a one-mile radius of EC1 is included as Figure 5-3 below. The facility was a large-scale operation, projected to accept an average of 1,858 tons per day of solid waste and a maximum of 4,290 tons per day. Review of this facility began in 2004 as part of the broader city-wide solid waste management process. The permit application was filed in February 2007. In April 2007, the applicant held an initial public meeting as part of its Enhanced Public Participation Plan. DEC held an additional hearing on the permit application on January 15, 2008. The permit was issued in August 2008 and was challenged by several members of the community. In April 2012, the Commissioner issued a final decision in the

administrative appeal, granting the permit. Each stage of this review process generated a significant level of community engagement.

**Table 5-3: Experimental and Comparison Case Characteristics**

	<b>Type of Facility</b>	<b>Permit Requested</b>	<b>Community Demographics (within a one-mile radius of facility)</b>	<b>Prior Community Experience</b>
<b>EC1</b>	Municipal solid waste transfer facility	New operating permit	53% non-Hispanic white, 14% Hispanic, 19% Asian, 10% African-American, 4% other minority	Organized to close a solid waste incinerator in the community
<b>CC1</b>	Municipal solid waste transfer facility	Expansion of existing facility (80 tons per day to 350 tons per day)	71% non-Hispanic white, 16% Hispanic, 7% Asian, 4% African-American, 2% other minority	Organized to block several previous efforts to increase operating limits at this facility
<b>EC2</b>	Power generation facility	Modification of existing configuration (no projected increase in emissions)	21% non-Hispanic white, 62% Hispanic, 7% African-American, 6% Asian, 4% other minority	Organized to block a proposed new facility in the community
<b>CC2</b>	Power generation facility	Modification of existing configuration (no projected increase in emissions)	46% non-Hispanic white, 30% Hispanic, 13% Asian, 9% African-American, 2% other minority	Organized to opposed and successfully modified the existing operating permit for this facility

Due to DEC's cautious approach to the EJ Policy, only a handful of the permit processes related to solid waste facilities in urban areas that were conducted in the same general time frame as EC1 were not conducted under the EJ Policy. The potential comparison cases from New York

state were not considered viable because they involved small modifications to existing facilities, significantly different waste streams or communities with significantly different demographics in terms of race and income. As a result, I expanded my search to facilities in New Jersey.

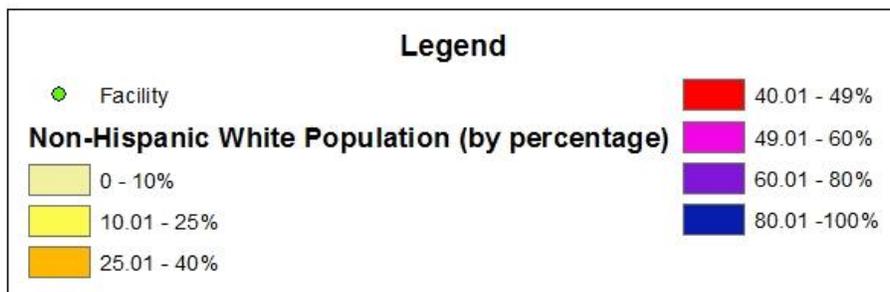
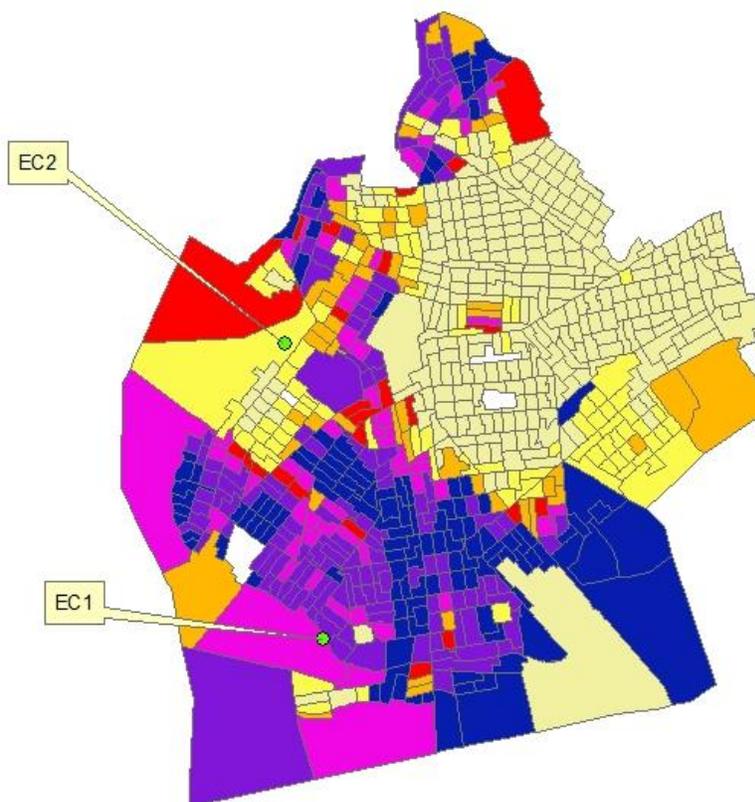
Although there are differences between the regulatory structures in these states, the relevant public participation rules are sufficiently similar to allow for meaningful comparison.

Under both legal systems, the first step for the permit applicant in EC1 and any permit applicant under New Jersey law is to ensure that their proposed facility was included in local solid waste management plans, which describe siting, tonnage limits and other operating rules (6 N.Y.C.R.R. § 360-1.8(g); N.J.A.C. § 7:26-2.4(b)). The applicants then have the opportunity to work with the relevant environmental agency to develop draft permits (6 N.Y.C.R.R. § 621.5; N.J.A.C. § 7:26-2.4(a)), which are issued for public comment once the relevant agency deems that the application materials are complete (6 N.Y.C.R.R. § 621.7(a)(2); N.J.A.C. § 7:26-2.4(g)). Although New Jersey regulations provide for an initial Notice of Complete Application, which does not include the tentative decision on the application, to be sent directly to affected municipalities and local agencies (N.J.A.C. §§ 7:26-2.4(g)(6), (7)), the general public is notified through newspaper publication once a tentative decision is reached (N.J.A.C. § 7:26-2.4(g)(11)). In New York, both notices are included in a single step and announced through newspaper publication (6 N.Y.C.R.R. § 621.7). In both states, the public notice must identify the applicant and the facility or proposed facility for which a permit is being sought, provide a brief project description, explain the process for and timing of public comment, and provide a contact within the regulatory agency (6 N.Y.C.R.R. § 621.7; N.J.A.C. § 7:26-2.4(g)(11)). Written comments are accepted in both states and, in some cases, comments are also received at public hearings

**FIGURE 5-2: Demographics of Brooklyn**

### Demographics around EC1 and EC2

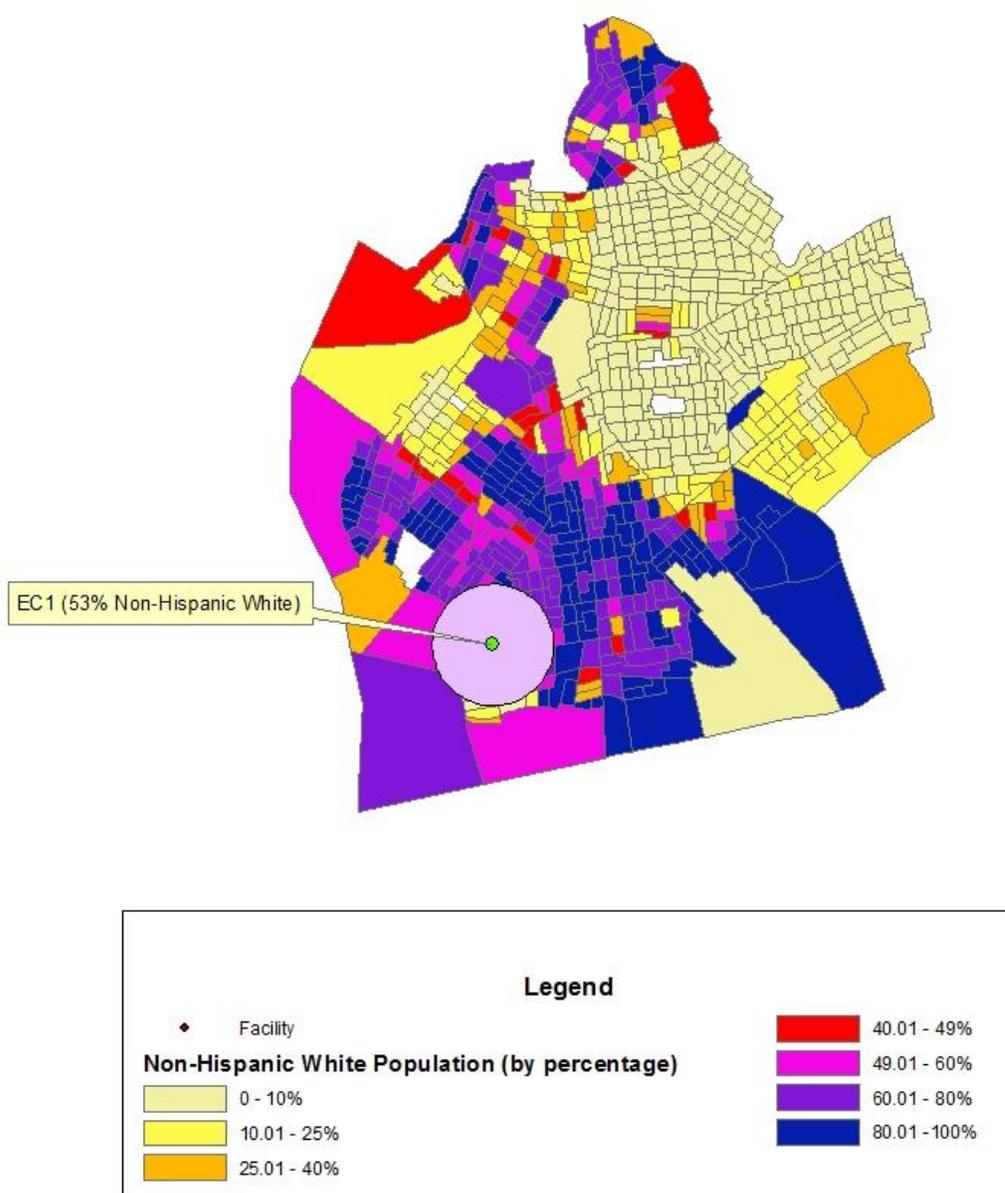
2000 Census Data for Brooklyn



**FIGURE 5-3: Demographics and Affected Area for Facility EC1**

## Demographics around EC1

Population within one mile of the facility  
using 2000 Census Data



Both New York and New Jersey specify certain permit processes for which public hearings must be held and allow public hearings to be provided in other cases if there is a significant degree of public interest (6 N.Y.C.R.R. § 621.7(c); N.J.A.C. § 7:26-2.4(g)(13)). The public hearing process is the most significant difference between the two regulatory structures. In New York, two types of hearings may be provided. The more common public hearing, known as a legislative hearing, is open to the general public and is intended simply to collect public statements (6 N.Y.C.R.R. § 624.4). Although DEC often holds question and answer periods or informal discussions about proposed projects in conjunction with this process, the hearing itself is directed by an Administrative Law Judge and is not designed as a dialogue.<sup>21</sup> The comparable hearing process under New Jersey law is less formal and more likely to result in an exchange of information between the applicant, the agency and the public. Public hearings in New Jersey are mediated by agency staff, who may provide information about the permit application and the proposed project (N.J.A.C. § 7:26-2.5(d)). The applicant is also required to be present at the hearing specifically “to answer questions” (N.J.A.C. §§ 7:26-2.5(b), (e)). Like legislative hearings in New York, however, the process is described as non-adversarial, open to the general public, and intended to generate public comment that is added to the formal record (N.J.A.C. § 7:26-2.5). In both states, agency staff may request additional data, reports, or plans where such information is deemed necessary to resolve concerns raised in public comments (6 N.Y.C.R.R. § 621.14(b); N.J.A.C. § 7:26-2.4(f)). Finally, both states require agency staff to issue a formal response to public comments as part of the final decision (6 N.Y.C.R.R. § 621.10; N.J.A.C. § 7:26-2.5(j)).

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<sup>21</sup> Where public comment or agency analysis reveals “substantive and significant” issues that may result in denial or significant modification of the permit, a more formal and interactive hearing process, known as an adjudicatory hearing, may be held (6 N.Y.C.R.R. § 621.8(b)). Participation in this process is limited to mandatory parties (the permit applicant and regulatory agency staff) and to parties that have raised significant issues, have a direct environmental interest or other interest in the case and can otherwise contribute meaningfully to the analysis (6 N.Y.C.R.R. § 624.5).

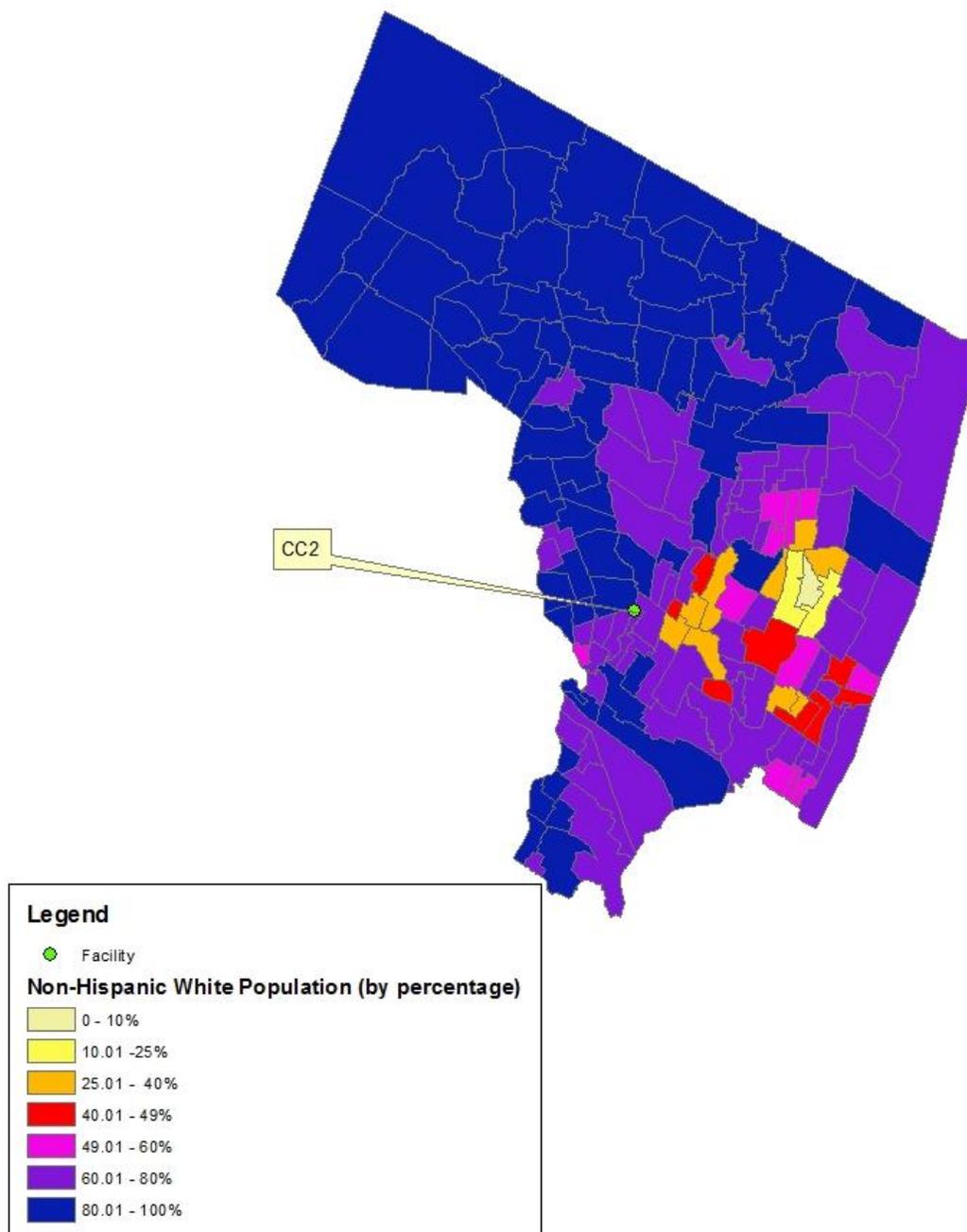
Given these similarities between New York and New Jersey law and the demographic similarities between the New York metropolitan area in which EC1 was located and the New Jersey towns lying just across the state line, I contacted regulatory staff at the New Jersey Department of Environmental Protection (DEP) to identify potential comparison cases. Staff members identified two solid waste permit processes that were occurring at approximately the same time as EC1 and affected areas with a significant minority population.

The selected case, designated CC1, involved a dramatic expansion of an existing solid waste management facility – from an allowed processing rate of 80 tons per year to a permitted rate of 350 tons per year. Like the community in EC1, there was a core group of concerned residents, who had been actively monitoring and working to remove the solid waste facility. Participation levels were relatively high in this case, with public records indicating 22 speakers and participation by additional unnamed audience members at the permit hearing. Within a one-mile buffer around the facility, the population is 71% white with the remaining residents being primarily Hispanic (16%) and Asian (7%). Again, only a small percentage of the population is African-American (4%) with the remaining residents identifying themselves as belonging to another minority group (2%). Although the white population is higher than originally envisioned (71% non-Hispanic white compared to maximum of 60% non-Hispanic white proposed in the initial research design), the difference between the white populations in the two cases is within the target range (20 percentage point difference). Accordingly, CC1 was chosen as a reasonable comparison case. A map showing the facility location and the demographics of the general area is included below as Figure 5-4; a map showing the demographics of the affected area is included below as Figure 5-5.

**Figure 5-4: Demographics of CC1 County**

## Demographics around CC1

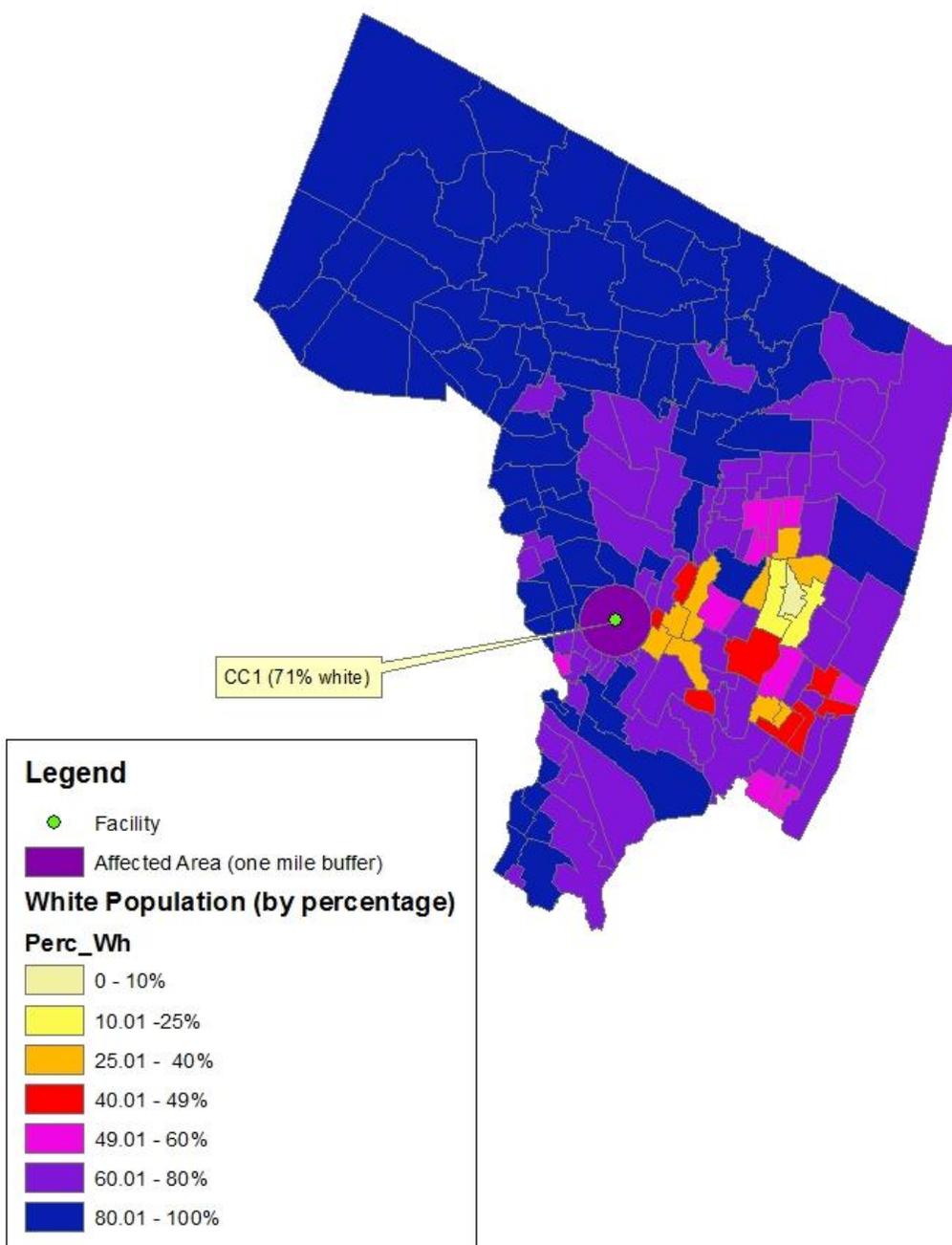
2000 Census Data for CC1 County



**Figure 5-5: Demographics and Affected Area for Facility CC1**

## Demographics around CC1

Population within one mile of facility  
using 2000 Census Data



The second environmental justice case, designated EC2, involved modification of an existing power generation facility. Specifically, the project involved installing additional equipment, which would be used preferentially to the older equipment. As a result, EC2 was described by the applicant as breaking even or creating a net reduction in overall facility emissions. Again, the facility was separated from adjacent residential areas by a major roadway and a narrow buffer of industrial and commercial properties. The proposed project was announced in October 2007. Although the actual permit application was not filed until December 2008, the applicant held a series of public meetings to meet its obligations under both the State Environmental Quality Review Act (SEQRA) and the Environmental Justice policy. In addition, DEC held its public hearing on the permit application in April 2009. The final permit was issued in October 2009. No appeals were filed from this decision. Records indicate community participation at each of these stages, although the numbers were far less than in the case of EC1.

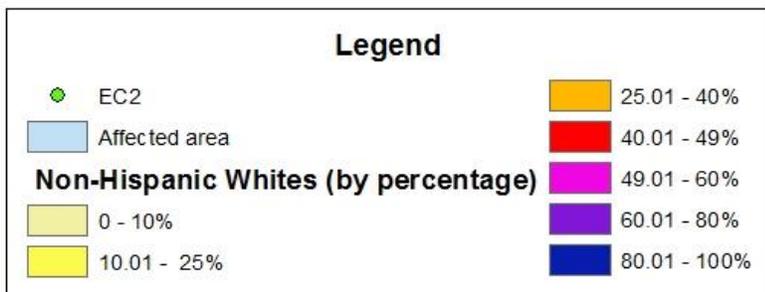
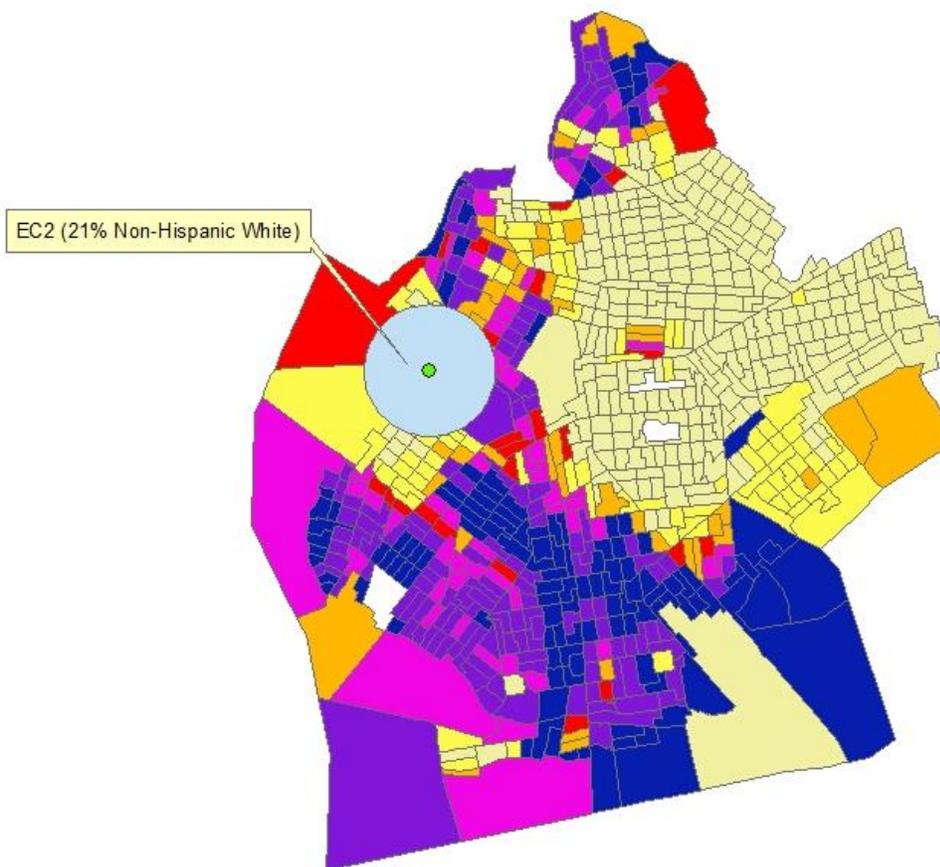
The community within a one-mile radius of EC2 has a high minority population with only 21% of the population identifying as non-Hispanic whites and 79% as minorities. The dominant minority groups in the area are Hispanics (62%) with African Americans (7%) and Asians (6%) coming in a distant second. An additional 4% of the population identifies itself as belonging to another minority group. A map showing the demographics within the affected area is included as Figure 5-6. There was no prior activism around this facility, but a portion of the affected community had successfully challenged a separate energy project in the area.

Finding a comparison case for EC2, the power generating facility, was hindered by the limited number of major permit modification sought in the relevant time frame. In addition,

**FIGURE 5-6: Demographics and Affected Area for Facility EC2**

### Demographics around EC2

Population within one mile of facility using 2000 Census Data



because the applicant in EC1 maintained that the proposed modification would not result in any increase in regulated emissions from the facility as a whole, the project seemed most comparable to minor permit modifications, which are defined as permit modifications that do not result in significant increases in regulated emissions<sup>22</sup> (6 N.Y.C.R.R. §§ 231-13, 621.3(b), 621.4(g)). The pool of potential comparison cases was therefore expanded to include applications for minor permit modifications for power generation projects that included a public participation component.

From this expanded pool, the comparison power generation case, designated CC2, was chosen. CC2 involved an application from an existing power plant in Manhattan for a permit renewal with minor modifications. Although the proposed modifications were not expected to increase emissions from the facility, the project had been the subject of intense community activity during a prior expansion process. Many community groups and individuals within the community remained engaged with the facility and requested a public hearing, which DEC held in November 2008. The final permit was issued in May 2009 and was not appealed.

The population within a one-mile radius of CC2 was 46% non-Hispanic white, 30% Hispanic, 9% African-American, 13% Asian and 2% other minority groups. Maps showing demographics of the broader community and the demographics within the affected area are included as Figures 5-7 and 5-8.

As with the first paired cases, the demographics for the communities around EC2 and CC2 are slightly different than originally planned. Both communities have higher minority populations than originally envisioned (54% minority in CC2 versus 79% minority in EC2). However, the demographic range between the two communities is only slightly higher than

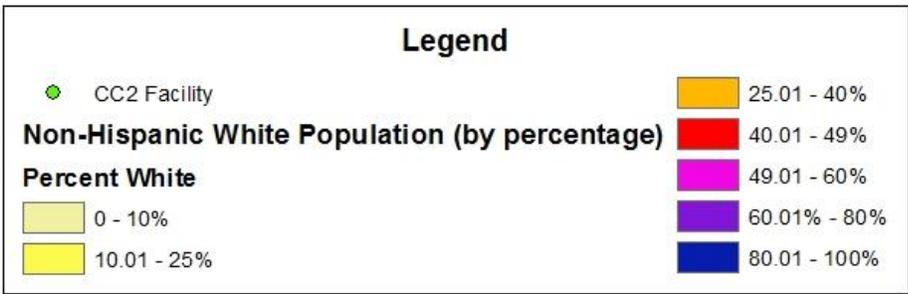
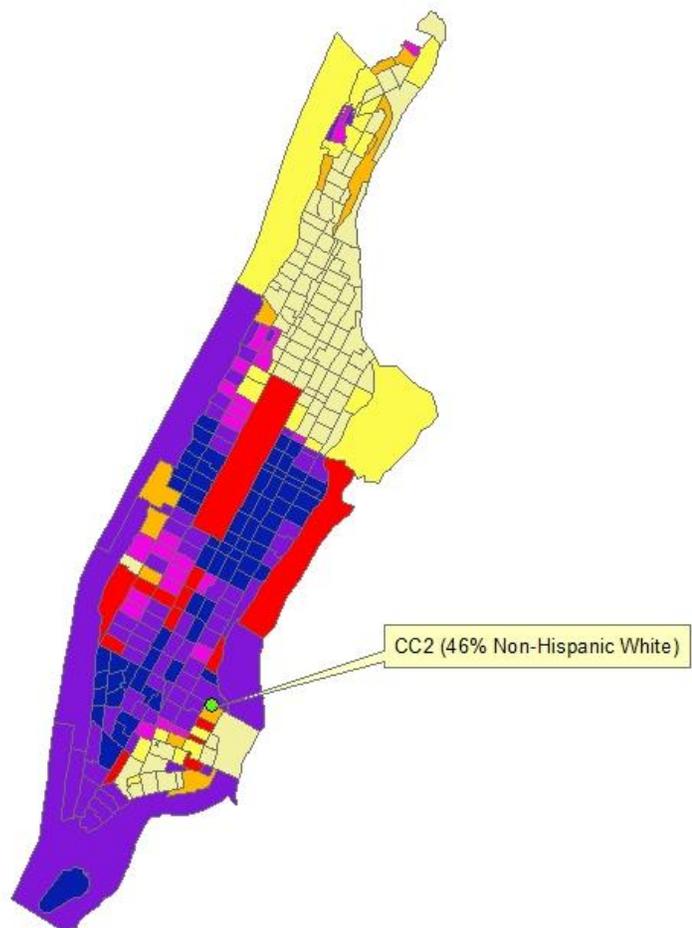
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<sup>22</sup> “Significant increases” are defined as additional emissions that exceed a set amount defined by regulation (6 N.Y.C.R.R. § 231-13).

**Figure 5-7: Demographics of Manhattan**

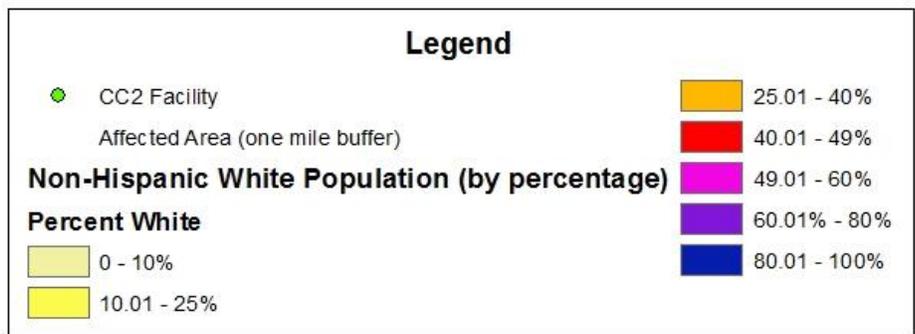
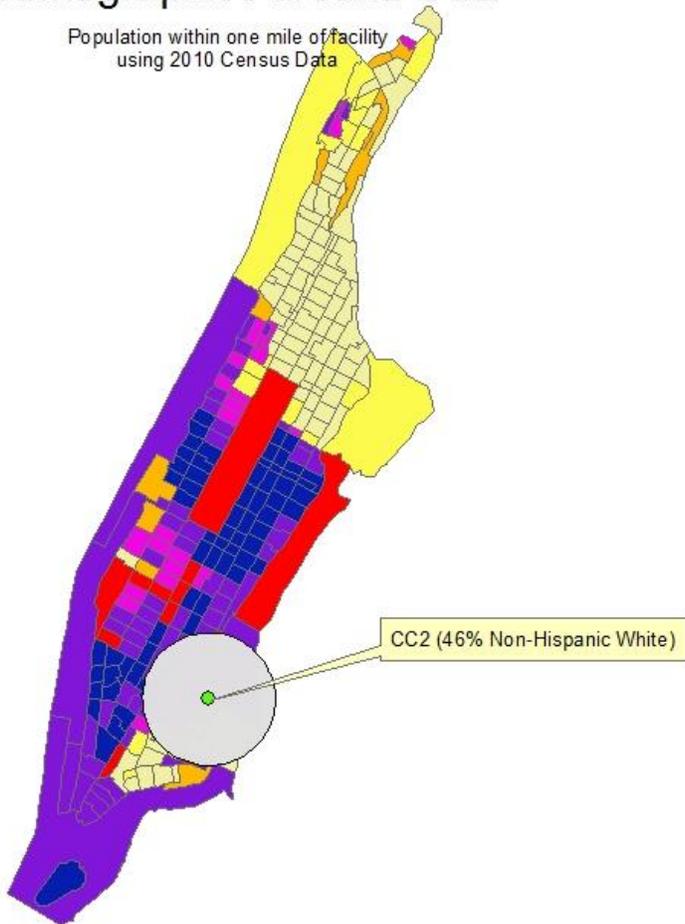
### Demographics around CC2

2000 Census Data for Manhattan



**Figure 5-8: Demographics and Affected Area for Facility CC2**

### Demographics around CC2



planned (a difference of 25 percentage points rather than 20). Because the cases are otherwise well matched, EC2 was retained as an environmental justice case and CC2 was adopted as a comparison case.

### **III. Data Gathering**

Once the case studies were chosen, data collection began. The first step was compiling the documentary record. In each case, the official agency record was reviewed and relevant documents scanned or copied. Where the applicant maintained an on-line or physical document repository, these sources were searched for any additional materials. In some cases, interviewees provided copies of additional materials from their files. Finally, permit applicants and agency staff were contacted directly where documents mentioned in the record were not otherwise available. All documents were scanned and converted to searchable PDF files for analysis. Over 200 documents were analyzed and coded, including application materials; correspondence between the applicant and regulatory agency; project-related studies and assessments; notice documents; meeting advertisements generated by the applicant, the agency and community activists; meeting and hearing transcripts; public comment letters; final permit documents; and media accounts. Documents were analyzed using the criteria and measures described above.

After collecting and reviewing the basic documents in each case, semi-structured interviews were conducted with 28 individuals who had participated in one of the public processes under review. For each case, a list of participants was compiled from the documentary record, including mailing lists created by the applicant or the regulatory agency, written comments, hearing testimony, sign-in sheets for meetings, and petitions. Each person's level of participation was noted. In cases where there was significant public participation, potential

interviewees were chosen to represent high, medium, and low levels of participation. High participation was defined as speaking at one or more public meetings and submitting unique written comments. Medium participation was defined as either speaking at a hearing or submitting written comments. Low participation was defined as attending, but not speaking, at a meeting, submitting a form letter, or signing a petition. Where participation was not as high or where the record did not include good contact information, all participants were listed as potential interviewees.

Potential interviewees were sent a letter, explaining the research and the interview process and asking for their participation. A copy of this letter is provided in Appendix 2. Where the contact information allowed, these letters were followed by phone calls or e-mails. Interviews were conducted in person or by telephone. Additional potential interviewees were identified through recommendations of initial interviewees. Interviews relied on a standard set of questions, although the interview structure varied depending on interviewee interests and level of participation. A copy of the standard questions is provided in Appendix 3. In three cases, a representative of the applicant agreed to an interview; in one case, an agency representative agreed to be interviewed.

Finally, data were gathered through a participant/non-participant survey. A copy of the survey materials is provided in Appendix 4. The survey questions were designed to measure the respondent's awareness of the project, level of involvement, reasons for involvement or non-involvement, ease of access to information, responsiveness of the applicant and/or agency, overall satisfaction with the process and the decision, and general levels of civic engagement and social trust. Draft surveys were piloted with two groups. First, they were tested for completion time and instruction clarity using graduate students. Second, members of a local environmental

grassroots organization were asked to complete the survey with reference to the permitting process in which they had been involved to test for question clarity.

The survey was administered by mail because of the difficulty of or potential bias created by alternatives, such as internet and in-person surveys. Because the targeted population was not presumed to have easy access to the internet, an on-line survey was deemed infeasible.

Telephone or door-to-door surveys were rejected as too expensive and time-consuming for a single researcher and as potentially biased toward residents who maintained land lines or were at home during the afternoon and early evening. Distributing surveys in-person at regular meetings of community groups or other community gatherings was rejected due to the limited number of opportunities and the potential that the results of such a survey would over-represent the constituents of specific organizations or people with strong community ties or civic engagement.

Sample frames, or lists of potential survey respondents, were developed separately for the participant survey pool and the non-participant survey pool. For the participant survey pool, a sample frame was developed for each case from the names and addresses of participants included in project mailing lists, written comments, filed petitions and hearing transcripts. Where identifiable, the names of elected officials and organizational entries for churches, schools and community organizations were eliminated from the list. Staff or volunteers associated with such groups remained on the list. In addition, any individuals who had either agreed or had directly declined to be interviewed were eliminated to avoid double counting and to respect expressed desires not to be part of the research. Addresses were confirmed or supplemented using publicly available search tools, such as WhitePages.<sup>23</sup>

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<sup>23</sup> WhitePages is an on-line service that allows users to look for telephone numbers and addresses by resident name. In addition, this service also includes an "Address and Neighbor" function, which allows users to check for occupant information by address and also gives occupant information for neighboring addresses.

Extra steps were taken to supplement the sample frame for EC2, because it did not appear to be a complete representation of the participants in the case. The applicant in this case published a limited mailing list, which primarily included elected officials and staff from community organizations, churches, schools and city agencies, and would not provide the larger mailing list which included individual participants due to concerns about privacy violations. Although a few additional participants could be identified through written comments or hearing testimony, case records indicated a far higher level of participation than reflected in this limited data frame. For that reason, the participant sample frame for EC2 was supplemented using a more complete mailing list developed for a second permitting process that occurred at approximately the same time and affected the same community and that generated a more complete mailing list of residents who had participated or expressed interest in the proposal. Because the survey itself was used for both participants and non-participants and respondents identified themselves as participants or non-participants through the survey, expanding the participant sample frame as described did not seem problematic.

The base lists for the experimental and comparison cases contained 120 (EC1), 45 (EC2), 49 (CC1) and 12 (CC2) names. For the three smaller lists, surveys were sent to all participants. For the largest list, participants were listed by address and every third participant was selected (starting from a randomly chosen number) until 45 names were reached. Addresses were confirmed, if possible, using White Pages and MelissaData.<sup>24</sup> Surveys were addressed by name, but the instructions indicated that survey should be completed by the current resident who was over 18 years old and had either been most active in the relevant permitting process or in the

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<sup>24</sup> Melissa Data is an on-line service that develops and sells its own mailing lists; cleans, updates and enhances user mailing lists; and allows users to verify that individual street addresses are valid.

community in general. As a result, some surveys in the initial round were completed by non-participants.<sup>25</sup>

Sample frames for non-participants were developed separately, based on proximity to the proposed facility. For each case, I developed a map of the area within a one-mile radius of the proposed facility. Where this area was interrupted by a significant physical barrier, such as a large water body or major highway, the study area was limited to the community on the same side of the physical barrier as the proposed facility. Within the study area, each block was numbered and twenty blocks were randomly selected from the set, using an on-line random number generator. The residential character of each of these randomly selected blocks was assessed using on-line resources, including MapQuest, Google Maps, White Pages and MelissaData, and investigator notes from in-person visits to the community. Ten blocks were identified from the larger list based on residential character (i.e., more residential than industrial or commercial uses on the block) and proximity to and distribution around the proposed facility.

Within each of these blocks, I developed a list of viable street addresses using the on-line resources listed above and notes from in-person visits to the community. Where the addresses included apartment buildings, a range of apartment addresses was developed for each building using Emporis.com (an on-line building directory) and investigator notes from in-person visits to the affected communities. The addresses within the given range were then entered into a numerical list and between five and ten addresses were randomly chosen from each block, using a random number generator. For example, where a particular block generated a list of 30 residential addresses, the addresses were ordered numerically and ten numbers between 1 and 30

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<sup>25</sup> The surveys completed by non-participants in this initial round revealed an additional issue with the “Skip” directions as originally drafted. This issue was remedied before the second wave of surveys aimed specifically at non-participants was mailed and the surveys returned from this round were completed as intended.

were selected using a random number generator. The residences associated with those numbers were sent surveys. Where the addresses included apartment buildings, at least one apartment building was selected for sampling and one-third to one-half of the ten addresses per block were drawn from the apartment building, depending on the proportion of single family homes and apartments. For each of the experimental cases, a total of 100 non-participant addresses were selected using this method; for the comparison cases, a total of 50 non-participant addresses were selected.

After generating a final list, each selected address was confirmed as residential housing using MelissaData. MelissaData was preferred over WhitePages, since the former database does not rely solely on phone records and an increasing percentage of the population no longer maintains a land-based telephone line. Once the address was confirmed, a search of the address was done using the on-line WhitePages to associate a name with the address, if possible. However, for the reasons stated above, addresses were not discarded when they did not appear in the on-line White Pages.

Both participant and non-participant surveys were administered using the Dillman method, which includes four points of contact (Dillman, 2007). First, potential respondents were sent a notice letter, telling them that they would be receiving a survey in the mail within a week or so. Approximately ten days later, the actual surveys were mailed along with a self-addressed, self-stamped return envelope and a cover letter explaining the research and asking that the survey be completed by the household person over 18 with the greatest involvement in the permitting process identified in the letter or in the community generally. Approximately two weeks later, respondents that had not returned a survey or asked to be removed from the study were mailed a reminder postcard. After another two weeks without a response, a final request for participation,

reiterating the importance of the research along with a replacement survey(s) and completion instructions were sent to all remaining respondents. Where possible, surveys were addressed to respondents by name and each letter was hand signed. Surveys were numbered to track response rates. When a survey was returned or a potential respondent asked to be removed from the study, the name associated with the survey was deleted from research records and no further contact was made.

Surveys and related correspondence were translated into Spanish and Chinese, as appropriate.<sup>26</sup> Each potential respondent was mailed the appropriate translation(s), based on information about his or her primary language contained in the records for each case or suggested by last name. If ethnicity could be gauged from last name, the English version and an appropriate translation (Spanish or Chinese) was provided. Where ethnicity was unclear, the respondent was sent the English version of the survey and one or both translations of the survey, based on community demographics.

Despite consulting survey methodology texts and survey researchers at Syracuse University, I found little research on best practices for administering written surveys in multi-cultural, multi-lingual communities. The method chosen appears to have significant shortcomings, since only 3 translated surveys were returned – two in Chinese and one in Spanish. In addition, one survey was returned blank with a note in English suggesting that Spanish language surveys should have been distributed within the community. In future, it would be worthwhile to assess various methods of approaching on-line or mailed surveys in multi-cultural, multi-lingual communities. In particular, it would be worthwhile to investigate the effect on response rates among both non-English speakers and English speakers of providing:

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<sup>26</sup> Given the demographics of each community, survey materials for EC1 and EC2 were translated into both Spanish and Chinese, while survey materials for CC1 and CC2 were translated only into Spanish.

(a) only the relevant translation (English or non-English); (b) the English and the dominant non-English translation(s); (c) all available translations; or (d) a response card allowing interested respondents to request the appropriate translation with each mailing.

Despite these efforts, response rates were low. The return rates for participant surveys were: 18% (EC1); 9% (EC2); 18% (CC1) and 25% (CC2). The overall return rate for participants was 16%. The return rates for non-participant surveys were: 12% (EC1); 3% (EC2); 6% (CC1) and 18% (CC2). The overall return rate for non-participants was 9%. In total, 50 surveys (24 participant and 26 non-participant surveys) were completed and returned. The low percentage and absolute number of surveys returned mean that the data is not meaningful for quantitative analysis. However, the survey results remain useful as descriptive or qualitative data and can be analyzed as part of the overall data pool.

#### **IV. Data Analysis**

All interview and hearing data were analyzed using Atlas TI, a qualitative data analysis tool. Interviews and documents were coded based on the six criteria of effectiveness (access, fair process, voice, deliberative dialogue, recognition and legitimacy) and related measures described in Table 5-2 above. For each case, at least one interview was coded twice with an interval of at least two weeks between the initial and confirmatory recoding as a check on reliability and to refine and more clearly define the codes. Surveys were treated similarly, with each survey research question and response pair tied to a particular code.

In addition to the specific measures of effectiveness, additional case characteristics were coded to evaluate potential external influences on the overall process. The presence and involvement of community groups was assessed, particularly in terms of their role in providing

notice of meetings, organizing public involvement, and establishing talking points. The level of “system savvy” shown by participants was evaluated with particular attention to consultation with experts or evidence of prior experience with or knowledge of the process. Data were assessed for descriptions of any new or unusual procedural, structural, or technical barriers to participation. Where available, evidence of the broader political climate and the historical level of political and civic engagement within the affected communities was pulled from the data. The type of concerns raised by the community and the level of concern expressed were coded. Finally, notices and other public communications were evaluated for tone, message and resonance with expressed community concerns.

The data was evaluated for internal consistency within each case and compared across cases. The primary comparison was between the combined environmental justice cases and the combined comparison cases and between the paired case studies. However, comparisons were also made between the environmental justice cases and between the comparison cases, particularly with respect to the potential external influences described above. Queries were run for each measure within each case and within environmental justice groups. The relevant quotations were grouped for analysis and reporting. Cases were compared based on the number of statements made within specific measures, the percentage of statements within a particular measure, the distribution of those statements across documents and interviews, the source of the statements, and the qualitative nature of the statements. In addition, word counts were run within each case to check for missed trends. From this evaluation, general conclusions were drawn about the impact of New York’s EJ Policy on the effectiveness of public participation in this context in general and with respect to each of the criteria of effectiveness and each criteria cluster.

## **V. Conclusion**

This research is designed as a comparative case study. Despite initial difficulties in locating appropriate environmental justice and comparison cases, I was able to identify suitable permitting processes with sufficient public engagement to create a meaningful record for review. Having defined criteria of effectiveness of public participation grounded in justice and democracy theory based on the literature and an analysis of situated perspectives of community and agency staff, I developed specific measures and counter-measures that could be applied to the documentary record. Relying on those measures as a guide, I developed interview questions and a field survey to gather additional data. In the next chapter, I present the results of my data analysis as described above.

## **Chapter 6: Measuring the Impact of Enhanced Public Participation under New York's Environmental Justice Policy**

In this chapter, I explore the key differences among the communities being studied, discuss the data collected in all four cases, and evaluate the impact of New York's EJ policy and relevant external factors on effective public participation. Applicants in the environmental justice cases studied fully complied with the EJ policy, providing extensive and tailored notice and outreach, earlier public meetings, and easier access to project information. Compared to the relevant comparison cases, cases where the EJ policy was applied showed consistent improvements in access and social recognition and uneven gains in voice, institutional recognition, and a limited form of dialogue. Greater gains in the latter three categories were realized where the applicant was committed to collaboration with the community and where a strong, well-organized community group was involved. Based on these results, I propose that New York's EJ policy increases the effectiveness of public participation in terms of access and social recognition and creates the opportunity for gains in voice, dialogue, and institutional recognition, with improvements dependent on applicant attitude, driven either by organizational culture or the strength of community players.

### **I. Grounding the Cases: Understanding the Communities Being Studied**

As briefly described in Chapter 5, the four cases selected involve either solid waste management facilities (EC1 and CC1) or power generation projects (EC2 and CC2). None of the four communities studied were newcomers to environmental conflicts, having all successfully challenged similar projects in the past, and activists or community organizations active in those

struggles remained engaged in each community. However, the type of campaign waged previously, the focus of organizational efforts, strength of community ties, and the relationship between the community and the applicant or agency differed between communities and may have had an impact on the strength, skill level, and openness to collaboration of involved community organizations.

More than two decades ago, activists in the EC1 community organized to close a solid waste incinerator operated by the EC1 applicant at the location proposed for the new solid waste facility (EC1 Legislative Hearings, EC1D70 and EC1D71). (See Appendix 9: Document Summary of Comparative Case Studies for a list of the document reference codes used.) This campaign focused on public protests and pressuring the state regulatory agency to close the incinerator for failure to hold proper permits and was directed by a coalition of community organizations and activists that dissolved at its successful conclusion. When the EC1 project was announced, many of the same individuals and organizations resurfaced to form another loose coalition and organize a similar pressure campaign focused on generating individual and organizational engagement in the permitting process. Although most of the community outreach documents were generated by a single organization, other groups were equally active in investigating and raising issues with the proposed facility.

Many EC1 participants remained distrustful of both the applicant and the DEC as a result of the earlier facility. One public hearing speaker testified that “I can still remember all of the protests that I took part in...to close down this toxic monster....Once again, there is a dangerous, life-threatening plan to dispose of garbage” (EC1 Legislative Hearing, D71) and an interviewee noted that “[I] got interested in this because we had an illegal incinerator at that spot for 33 years. It didn’t have the proper permits. And the government knew and no one did anything

about it” (EC1I6).<sup>27</sup> The incinerator and its effects were among the most frequently raised issues in this case (481 references), second only to traffic impacts (849 references) and the hazards of dredging (693 references).

In CC1, individual activists had periodically organized their neighbors to oppose requests to expand the solid waste facility at issue in that case since it opened more than twenty years ago (CC1I4). These efforts focused on swaying administrative decision-makers through a large and vocal public presence at local hearings on the issue. In this case, however, a core group of individuals had remained active since the early 1990s, organizing opposition to multiple requests for expansion requests at the administrative level (CC1I3, CC1I4, CC1I5), monitoring and reporting the routine permit violations throughout the facility’s operations (CC1I2), and even taking legal action on behalf of the host community to force agency enforcement of the existing permit (CC1I5). As a result, several key activists in this case, including two former elected officials, were experienced in navigating administrative processes. However, this history also left respondents deeply distrustful of the permit applicant and skeptical of the regulatory agency’s willingness or ability to enforce any new permit. One interviewee noted that the applicant “was always doing more than he should have anyway” and predicted that, with the permitted increase, “he might be up to 1,000 now” (CC1I1). Four of five community interviewees and seven of twenty-two hearing speakers were skeptical that the applicant would avoid or the agency would take action on permit violations. In fact, an applicant statement that “trucks are not allowed to park or queue on public roads...that is a violation,” sparked general laughter at the public hearing (CC1 Legislative hearing).

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<sup>27</sup> Interview transcripts are referenced by case, the letter “I” and interviewee number. The reference “EC1I6” refers to the transcript of the sixth interviewee in EC1. Each interview transcript also has a document number, as reflected in Appendix 9.

In EC2, an established community group active in permitting process had recently led a legal battle to block a similar energy project on its waterfront. This group has a long history of activism in the community and a professional staff, suggesting a greater ability to engage successfully in administrative processes. This may have colored applicant actions toward the community. Although the EJ policy requires direct community outreach, an EC2 applicant representative explained its earliest efforts by noting that “[w]e knew the area we were working in had had several [similar projects]...proposed and...had strong opinions about our type of project in their community” (EC2IA4). However, there were continuity issues in this case, since the earlier campaign did not involve the same applicant or location as the EC2 facility and part of the area affected by the EC2 facility was outside the normal constituency of the lead community group.

Differences in socioeconomic status between affected areas led to a tense relationship between major players in the EC2 process. The director of the established community organization noted that there was “a very disenfranchised community and a very privileged community” affected by the facility and she was concerned that “the most privileged people [would] feel entitled to speak on behalf of everyone,” leaving the disenfranchised community out of the dialogue (EC2I3). One activist from this “very privileged community,” however, reported feeling so disrespected by the long-term environmental group that she abandoned efforts to collaborate and complained that this group dominated discussions with the applicant (EC1I2). Community trust in the applicant and the regulatory agency were similarly mixed, with participants aligned with the established community groups generally praising the efforts of the applicant and others expressing greater skepticism.

In CC2, an earlier effort was led by a group created specifically to oppose the prior request for permit revisions. In this case, the disruption in continuity was largely due to activist burn-out. Many of the people most involved in the earlier expansion request were only marginally involved in the 2008 permit revision, because as one woman stated, they were “probably also just exhausted by the whole process” (CC2I2). In addition, participants in the prior process “were entitled to a certain amount of money for... legal experts” and “had really good talent on our side” (CC2I3). This assistance was not available for the CC2 process, diminishing the power of the group’s prior experience.

The connections created during the earlier campaign, however, appear to have had some effect on the applicant’s action. Although outreach in CC2, which was not subject to the EJ policy, was limited, the applicant individually contacted local elected officials “to apprise them of modifications to the... permit” (CC2IA4). The prior campaign may also have created more distrust of the applicant within the community, although these effects were mixed. Two of six interviewees expressed increased faith in the applicant, citing the appointment of a community liaison to field complaints (CC2I3) and specific employees who “grew more willing to listen” to the community (CC2I7). Three of the six remained skeptical, stating the applicant still “didn’t want to have to deal with all these different communities” (CC2I2) or general skepticism about the regulatory agency and the permitting process in general (CC2I1, CC2I8).

These case-specific characteristics may be important in understanding the effects of the EJ policy on the environmental justice cases. In particular, the presence of a strong community organization and cohesive community may interact with structural changes imposed by the EJ policy to amplify or alter the effectiveness of public participation in terms of providing voice, deliberative dialogue and institutional recognition.

## **II. Considering the Impact of New York's EJ Policy**

New York's EJ policy, by its terms, is addressed primarily to improving public access to and public voice within permitting processes affecting environmental justice communities.

Based on my research, I propose that the EJ policy does, in fact, improve access to and social recognition within the process. The policy also seems to create the opportunity for improved voice, deliberative dialogue and institutional recognition, although other factors determine whether communities are able to take advantage of those opportunities. Finally, the policy has limited, if any, effects on the perceived legitimacy of the decision or the decision-making process within the affected community.

### **A. Impacts on Access**

Access, one of the six criteria of effective public participation, was of particular interest to participants across the cases. Almost one in five coded references in both the environmental justice and comparison cases related to access issues. This criterion is measured by actual notice, accessible information, conveniently timed and located (accessible) meetings, number of participants, and the range or representativeness of participants engaged and additional sub-measures (see Table 5-2 for details). Generally, environmental justice cases saw measurable improvements in documented efforts to provide notice, accessible meetings and accessible information and saw higher numbers of participants. However, representativeness did not increase markedly and, overall, participants in both environmental justice and comparison cases expressed similar levels of dissatisfaction. However, complaints expressed within environmental justice cases tended to be more nuanced, suggesting objective improvements or higher

expectations of the participation process in those cases. Table 6-1, included below, provides a summary of notice-related data gathered in interviews and document review.

**Table 6-1: Summary of Access Data related to Notice**

<b>Notice Measures</b>	<b>Environmental justice cases:</b>	<b>Comparison cases:</b>
Documented outreach efforts	<p><b>EC1:</b> Newspaper notice (advertisement in local papers) in three languages. Flyers/posters in three languages placed locally. Direct notice to mailing list.</p> <p><b>EC2:</b> Newspaper notice (advertisement in local papers) in four languages. Flyers/posters in four languages placed locally. Direct notice to mailing list.</p>	<p><b>CC1:</b> Direct notice of permit application to neighboring towns. Newspaper notice (legal section of local paper). Direct notice of final permit to mailing list.</p> <p><b>CC2:</b> Newspaper notice (legal section of local paper). Direct notice of final permit to mailing list.</p>
Perceived adequacy of notice	<p>Notice changes: 25% of reform suggestions (16% suggested direct notice).</p> <p><b>EC1:</b> 7 of 8 community interviewees reported inadequate notice.</p> <p><b>EC2:</b> 3 of 4 community interviewees reported inadequate notice; 1 interviewee and 1 hearing speaker praised notice.</p>	<p>Notice changes: 13% of reform suggestions (5% suggested direct notice).</p> <p><b>CC1:</b> 4 of 5 community interviewees reported inadequate notice.</p> <p><b>CC2:</b> 5 of 6 community interviewees reported inadequate notice; 2 hearing speakers complained of inadequate notice.</p>
Initial notice source	<p><b>Direct notice from applicant or agency:</b> 2 references (12%).</p> <p><b>Community organizations/Neighbors:</b> 7 references (41%).</p> <p><b>Incidental notice (news articles, unattributed flyers/posters):</b> 8 references (47%)</p>	<p><b>Direct notice from applicant or agency:</b> 5 respondents (18%).</p> <p><b>Community organizations/Neighbors:</b> 17 references (41%).</p> <p><b>Incidental notice (news articles, unattributed flyers/posters):</b> 7 references (24%)</p>

Source: Interview/document references.

In both environmental justice cases, applicants provided notice in multiple languages through direct notice to a large mailing list, newspaper advertisements, posters in local businesses and locally distributed flyers. Initial mailing lists included churches, schools,

community organizations, elected officials, and community leaders. Lists expanded to include individuals who had expressed interest or participated in the project. In contrast, comparison case applicants only notified neighboring municipalities and provided formal newspaper notice in the legal section. One EC2 speaker describing the “public meetings as “advertised very, very well” (EC2 Legislative Hearing), while a comparison case activist characterized the process as a “sleeper thing” (CC2I2).

Despite these objective differences, there were mixed results in terms of community awareness and satisfaction. Sixty-four percent of non-participant survey respondents in environmental justice cases (9 of 14) and fifty-eight percent (7 of 12) in comparison cases reported that they did not know about the proposed project. Eleven of fourteen (78%) environmental justice case non-participant survey respondents listed inadequate notice or incomplete knowledge of project and its effects as a primary reason for non-participation. Interviewees and other participants that discussed how they received notice most often characterized it as incidental<sup>28</sup> (47% of environmental justice references; 24% of comparison references) or community-driven<sup>29</sup> (41% of both environmental justice and comparison references), rather than agency- or applicant-generated (12% of environmental justice references; 18% of comparison references). Half of environmental justice case survey respondents (13 of 26) and two-thirds of comparison case survey respondents (16 of 24) relied on notice from community organizations or neighbors. Far smaller numbers (4 of 26 environmental justice respondents; 1 of 24 comparison respondents) reported getting notice directly from the applicant or agency. Table 6-2, included below, summarizes the survey data.

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<sup>28</sup> Participants tended to characterize notice as incidental where they read of the project in a news article or newspaper notice, heard of it during an unrelated meeting or, in one case, simply stumbled upon the meeting itself.

<sup>29</sup> “Community-driven” refers to notice provided by community organizations, environmental groups or neighbors.

**Table 6-2: Summary of Average Survey Ratings by Criterion, Measure and Sub-Measure**

<b>Criterion</b>	<b>Environmental Justice Cases</b>	<b>EC1 N=19</b>	<b>EC2 N=5</b>	<b>Comparison cases</b>	<b>CC1 N=12</b>	<b>CC2 N=12</b>
<b>I. Access</b>	2.39	2.31	2.58	2.02	2.6	1.5
A. Accessible meetings	2.77	2.75	2.83	2.63	2.89	1.8
B. Accessible information	1.95	1.77	2.33	1.39	1.47	1.17
<b>II. Fair Process</b>	2.02	1.97	2.14	2.08	2.2	1.8
A. Unbiased agency	1.88	1.91	2.0	2.03	2.27	1.67
B. Competent agency	2.26	2.25	2.29	2.24	2.42	1.94
<b>III. Voice</b>	2.25	2.31	2.08	1.74	1.68	1.87
<b>IV. Dialogue</b>	1.91	1.83	2.13	1.64	1.65	1.6
<b>V. Recognition</b>						
A. Social recognition	2.6	2.65	2.45	2.19	2.5	1.88
B. Institutional recognition	2.19	2.08	2.41	2.15	2.23	2.05
(1) Respect for Community	1.95	1.73	2.43	2.13	2.25	2.0
(2) Community concerns heard	2.34	2.32	2.4	2.16	2.22	2.07
<b>VI. Legitimacy</b>						
A. Process satisfaction	1.82	1.92	1.5	1.4	1.36	1.5
B. Repeat participation*	2.45	2.25	3.0	2.3	2.13	3
C. Decision satisfaction	1.67	1.5	2	1.18	1.25	1.0
D. Trust in agency	1.86	1.74	2.16	1.84	1.83	1.84

**Note:** This table presents the average score for each measure on a 4-point Likert scale. Points were assigned to each response as follows: strongly agree = 4 points, agree = 3 points, disagree = 2 points and strongly disagree = 1 point. Questions that are reverse coded are scored in the opposite order. The asterisk indicates a different scale: more likely to participate = 3 points, as likely to participate = 2 points and Less likely to participate = 1 point. Although the respondents were always offered the choice “don’t know,” these response were not included in the average. The specific survey questions relevant to each of these measures are provided in Appendix 5.

Changes in notice were the most frequently suggested reforms in environmental justice and comparison groups (25% of reform suggestions in environmental justice cases; 13% in

comparison cases and 11 of 50 survey respondents). However, the reforms suggested in environmental justice cases were typically specific tweaks in the method of distribution and predominantly suggested methods of direct notice (16% of reform suggestions). For example, environmental justice case interviewees suggested that “[t]here should be something in the utility bill” (EC2I1) or that “they could post more notices in places where people will see them” (EC1I5). Although 5% of reform suggestions in comparison cases also requested direct notice, most of the other comments on needed change indicated more general levels of dissatisfaction. A typical comment was that “they need to make these hearings...more public...[N]ot like some little secret thing” (CC2I7). In comparison cases, notice problems were often characterized as intentional, which also suggests stronger dissatisfaction. For example, a CC2 interviewee complained “they were going to do [this permitting process]...in the middle of the night” (CC2I3), while a CC1 interviewee noted that “they try to withhold any information they can from you” and he now “read[s] the legals every day” (CC1I5) and another stated that “I go to all council meetings now” (CC1I2).

Environmental justice case applicants made greater efforts to ensure that project information and meetings were accessible. Table 6-3, included below, summarizes interview and documentary data related to accessibility of information and hearings. For example, the EC2 applicant held several public meetings, attended others convened by community groups, and provided tours of its facility (EC2 Progress Report #4). The EC1 applicant held only one meeting, but found a location favored by the community after getting complaints (EC1IA1). Both environmental justice applicants placed the draft permit and other project-related documents in local libraries and the Community Board office and posted materials on-line. Comparison case efforts were more limited. In contrast, the CC1 applicant attended one public

hearing where it spoke directly to community questions and sent the agency project-related documents, which were only available to the public at the agency's central office through a formal request. While the CC2 applicant placed permit documents in a local library, it also appeared at only one public hearing.

**Table 6-3: Summary of Access Data Related to Accessibility of Hearings and Information**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Accessible hearings</b>  Documented efforts to set convenient meetings	<b>EC1:</b> Changed meeting location; held afternoon and evening meetings  <b>EC2:</b> Met at locations set by community organizations; held multiple meetings at various times	<b>CC1:</b> Held meeting in community; scheduled in the evening  <b>CC2:</b> Held meeting in community; scheduled in the evening
Perceived accessibility	Only documented dissatisfaction related to coordinated request for comment extension	No documented negative comments
<b>Accessible information</b>  Documented efforts	Available in local library, Community Board office, and on-line.	<b>CC1:</b> Available by request  <b>CC2:</b> Available in local library.
Information Sources	Community sources: 6 references (5 interviewees; 1 hearing speaker).  Official sources: 10 references (10 interviewees)	Community sources: 4 references  Official sources: 0 references
Perceived accessibility	11 negative references; no specific reform suggestions	24 negative references; 5% of specific reform suggestions

Source: Interview/Document references.

Participants in both groups seemed generally satisfied with meeting accessibility (see Table 6-3 above). Although several EC1 and CC1 participants complained of timing problem in comment letters, this appeared to be strategic. In both cases, participants raised nearly identical

concerns as a reason for extending the comment period, citing intervening Jewish holidays in EC1 and the Community Board summer recess in CC2. While several survey respondents suggested changes in timing or location of meetings (6 of 24 comparison respondents; 4 of 26 environmental justice respondents), only two respondents listed inconvenient meetings as a deterrent to participation.

Access to information, however, was judged better in environmental justice than comparison cases. As indicated in Table 6-3, environmental justice case interviewees were twice as likely to reference using official sources of information as community-based sources. The EC2 applicant's efforts were praised by the director of a community organization, who noted that the applicant worked hard to present information in "culturally appropriate ways" rather than "engineer speak" (EC2I3). In contrast, none of the comparison case respondents mention referencing agency or applicant provided documents and did not seem to expect information from this source. Instead, participants described their information sources as community groups or their own observations. One CC2 interviewee noted that "I learned more by...meeting [community activists] basically" (CC2I8) and another participant cited inaccessibility of relevant information as a reason for extending the comment period and holding a public hearing (Letter from Community Board to DEC, CC2D10). This is reflected, in part, by the comments raised at hearing. While many of the issues raised in EC1 focused on the accuracy of applicant impact analyses, CC1 participants almost exclusively focused on concerns drawn from their prior experiences with the facility. For example, one interviewee asked about flooding at the proposed facility, explaining his concerns on the fact that, in the past, "[w]e had 4 feet of water going right here, right down the middle of [the street. The facility] was completely flooded" (CC1I5). Hearing testimony similarly focused on issues identified through personal experience, such as

traffic, odors, noise, hours of operation, community compatibility and the facility's history of violations.

When environmental justice case respondents suggested reforms related to information, they typically focused on ease and timing of access (3 of 14 references), difficulties understanding technical documents (5 of 14 references) and potential inaccuracies in the data or analyses (2 of 14 references) rather than simple gaps in information (5 of 14). Although interviewees recognized that documents were available in the community, they complained that the documents could not be found or reviewed before the public meeting (EC2I1) or that the document repositories weren't the most convenient location (EC1I6). In describing the technical barriers to information, one interviewee stated that, although "you're not an engineer [or] a scientist [or] an environmental expert, you have to learn each of these areas before you can make an intelligent comment" (EC1I3) and another noted that a key document was available at the public hearing, but "it was difficult to read through" given its length and density (EC2I1). A speaker at one of the public hearings complained that not even "a well-educated individual, can...make a rational decision [about this project] because you don't have a way of measuring it" (EC2D36). In contrast, interviewees in the comparison cases either did not reference applicant or agency-provided information or focused on the simple lack of data (11 of 15 comments).

Levels of participation as a whole were higher in the environmental justice cases than in their directly comparable comparison cases, but the larger number of participants did not necessarily increase the representativeness of participants. Table 6-4, below, summarizes interview and documentary data regarding number and representativeness of participants. EC1 drew the highest total number of participants with up to 200 hearing attendees, tens of speakers, "thousands" of comment letters, and a final mailing list of 1,000 unique names. The matched

comparison case, CC1, saw far fewer active participants, with only 22 speakers at the formal public hearing and a final agency mailing list of 18 names. Participation levels in EC2 were higher than in its matched comparison case (CC2), but lower than in either EC1 or CC1. Based on the average attendance at each of the multiple meetings held by the EC2 applicant, I estimate that 50 to 100 individuals attended and 20 to 30 people spoke during these meetings. This comports with the final mailing list which included 60 elected officials, community leaders, and community organizations and an unknown number of private individuals. The least well-attended process was CC2 with approximately 25 comment letters, 15 speakers and an unknown number of attendees at the single public hearing provided, and a final mailing list of 15.

Measures of the range of voices present are not significantly different between comparison and environmental justice cases. Although there are some indicators of minority participation in the record (see Table 6-4), participant demographics were not tracked during the process and, accordingly, cannot be measured directly. However, it's telling that, although both environmental justice applicants provided information and outreach materials in multiple languages and made translators available for all meetings, translation services were never used.

As described in Table 6-4, in three of the four cases (EC1, CC1 and CC2), perceptions of representativeness were positive, although many of these assessments in focused on characteristics unrelated to race, ethnicity, or class or relied on representation by community leaders (see Table 6-4). In EC1, interviewees noted that the dominant community groups, seniors and Asians, “were well-represented, both as individuals and by community leaders, who speak for their groups” (EC1I4) and that multiple interest groups, including “people that were into birds...fisherman...lots of groups [were] involved” (EC1I2). CC1 interviewees characterized representativeness solely in terms of geography, occupation and people “in political power”

**Table 6-4: Summary of Data Related to Access/Number and Diversity of Participants**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Number of participants</b>  Hearings (speakers and attendees):	<b>EC1:</b> EJ meeting: 48 speakers, 200 attendees (est.). DEC hearing: 58 speakers, unknown number of attendees. Pre-permit meeting: 6 attendees  <b>EC2:</b> Community Briefing: 22 attendees. EJ Meetings (2): 24 attendees. DEC hearing: 8 speakers, at least 25 attendees. Community group meetings attended by applicant: unknown.	<b>CC1:</b> DEP hearing: 22 speakers, 100 attendees. Local agency hearing: 30 attendees.  <b>CC2:</b> DEC hearing: 15 speakers, unknown number of attendees. Described as “not packed, but there were people there” (CC2I1)
Written comments:	<b>EC1:</b> Over 1,000 comment letters, including 300 form letters  <b>EC2:</b> 2 written comments.	<b>CC1:</b> Over 500 petition signatures; one written comment <b>CC2:</b> 24 comment letters (all from professional advocates and elected officials)
Mailing list	<b>EC1:</b> ranged from 100 to 1100 names  <b>EC2:</b> ranged from 56 to 81 names on public list; also maintained a non-public mailing list for individual participants	<b>CC1:</b> 18 on final permit  <b>CC2:</b> 15 on list for final permit
<b>Range of voices</b>  Participant demographics	<b>EC1:</b> Translators available and requested but not used; no other documentary reference. 2 of 7 community interviewees were non-White. 2 speakers identified as representing Chinese American Association.  <b>EC2:</b> Translators available but not used; no other documentary reference. 2 of 4 community interviewees were non-White. 1 speaker identified as representing a Hispanic organization.	<b>CC1:</b> No non-White interviewees; no documentary reference.  <b>CC2:</b> No non-White interviewees; no documentary reference.
Perceived range of voices	<b>EC1:</b> 6 positive references (including 4 of 7 interviewees); 1 negative reference (including 1 of 7 interviewees)  <b>EC2:</b> 2 positive assessments (1 of 4 interviewees), 2 negative assessments (2 of 4 interviewees).	<b>CC1:</b> 2 positive reference (2 of 5 interviewees); 1 negative reference (1 of 5 interviewees)  <b>CC2:</b> 4 positive references (3 of 6 interviewees); 1 negative references (1 of 6 interviewees)

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Number of participants</b>  Hearings (speakers and attendees):	<b>EC1:</b> EJ meeting: 48 speakers, 200 attendees (est.). DEC hearing: 58 speakers, unknown number of attendees. Pre-permit meeting: 6 attendees  <b>EC2:</b> Community Briefing: 22 attendees. EJ Meetings (2): 24 attendees. DEC hearing: 8 speakers, at least 25 attendees. Community group meetings attended by applicant: unknown.	<b>CC1:</b> DEP hearing: 22 speakers, 100 attendees. Local agency hearing: 30 attendees.  <b>CC2:</b> DEC hearing: 15 speakers, unknown number of attendees. Described as “not packed, but there were people there” (CC2I1)
Range of issues raised	No significant differences in issues raised within environmental justice cases	No significant differences in issues raised within comparison cases

Source: Interview/document references.

(CC1I5). No interviewees referenced the community’s Hispanic population and, although two interviewees acknowledged that renters living close to the facility were not involved, this was not described as a problem or concern (CC1I2, CC1I5). In CC2, of the three interviewees who characterized participation as representative, one cited elected officials as providing representation (CC2I8).

The assessment of EC2 diversity was mixed and split along the community dividing line discussed above. Two of four interviewees expressed concern, noting that “the majority of the people living in the community seem[] to be Hispanic or working class people...[and those groups] were not there to a great degree” (EC2I1) and that the process was dominated by “professionals, students, [or those] involved in groups” (EC2I2). A third interviewee, the director of the established community organization, agreed that elites dominated many of the public meetings, but felt that other groups, including “the most disempowered” were represented and able to “raise their issues” through meetings hosted by local groups and direct discussions between the applicant and “the Community Board,...the Chinese community, [another

community group], [and] different people who have deep roots in the community and... a base of stakeholders” (EC2I3). However, this established community organization was deeply involved in direct outreach to the minority groups within the community, both directly and in collaboration with the applicant. The level of effort invested may have had some impact on the assessment of results. In addition, the uneven assessments in this case may reflect the multiple, tailored meetings used to reach specific communities, the limited involvement of individual participants in the outreach process, and the size of the minority population in the area affected by the EC2 facility, which could raise expectations for minority participation.

Other indicators of an increased range of voices, such as new participants, non-professional participants, and range of concerns expressed, were mixed. Based on the survey data, CC1 drew the highest number of new participants (8 of 9), who were, with one exception, recruited by neighbors, while EC1 had the second highest number (4 of 8), who were drawn into process by active community organizations. Although most of the CC2 hearing speakers (12 of 15) were community residents, every written comment, including formal written testimony, came from elected officials, environmental organizations, or community groups and was focused on specific talking points. In contrast, most EC1 participants (7 of 8) and hearing speakers identified themselves as simply community residents, but there was a far greater repetition of concerns in EC1 than in any case other than CC2, suggesting either a limited range of voices or strong organizing efforts.

Interestingly, the organized comments in EC1 came from a range of community members and focused on technical issues, such as the impacts of dredging, the adequacy of a traffic impact study, and the prior history of violations and lax enforcement at the site. In CC2, organized comments came from elected officials and environmental organizations that were already part of

an “alert” network (CC211). Although some hearing participants made similar comments, they involved the kind of complaints about odor, noise, traffic and enforcement to be expected in any solid waste permit process. This, along with the higher overall participation and the broader range of participants in EC1, suggests that the enhanced and early public participation provided more time for community organizers to reach out to local residents. This hypothesis is further supported by the fact that, the established community organization in EC2 was involved contacted early enough to influence the overall outreach plan, arrange a series of “off-grid” meetings for its constituents, and “make [the] phone calls” that the director judged were need “to get people to turn out” (EC2I3).

Overall, the environmental justice cases provided better actual notice and access to information and increased general community awareness of and levels of participation in the public process. However, participants remain dissatisfied with the structural elements of access and the environmental justice cases did not appear to have significantly more representative participation or to draw the disenfranchised populations explicitly targeted by the EJ policy into the process in higher numbers. However, the early notice provided in the environmental justice cases allowed participants to conduct more extensive organizing efforts, as demonstrated by the well-coordinated talking points and negotiation efforts in these cases. Based on these data, I hypothesize that the EJ policy directly improves access and may indirectly improve the level and representativeness of participation, through the early activation of community organizations and activists.

## **B. Impacts on Fair Process**

Fair process, as a criterion of effective access, is measured by agency competence or lack of bias, equitable treatment of the community across time and location, consistent processes and,

as a counter measure, applicant bad faith. The data from these cases studies show no consistent differences in the fair process measures between environmental justice and comparison cases, but noticeable differences within the environmental justice cases and comparison cases. Table 6-5, included below, summarizes the interview and documentary data related to fair process. Fair process issues were also of limited importance to participants and were one of the two least referenced criteria of effectiveness (see Table 5-1). Based on this data, I propose that the fairness of the review process is affected to a larger degree by community-specific factors, such as the relationship between the community and the applicant or agency and community sophistication, than by application of the environmental justice policy specifically.

There were no meaningful differences in the objective measures of fair process between comparison and environmental justice cases. As noted in Table 6-5, there were no deviations from standard review processes in any case and only three outright refusals to answer questions from the public, all related to financial data and split between comparison and environmental justice cases. Participants in both cases involving solid waste facilities (EC1 and CC1) focused heavily on past violations by the relevant applicants (see Table 6-5) with more limited concerns focused on applicant-community relations in the power generation cases (EC2 and CC2). However, these concerns were not more pronounced in either environmental justice or comparison cases.

There were differences in perceptions of fair treatment across comparison and environmental justice groups, but these differences were small, inconsistent, and often overwhelmed by difference within categories. For instance, in interviews and project-related documents, the comparison group referenced agency bias more often (18 comparison references

**Table 6-5: Summary of Data Related to Fair Process**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Unbiased and competent agency</b>  Perceived agency competence	<b>EC1:</b> 6 negative references; 4 related to inadequate impact analyses and 2 to enforcement failures  <b>EC2:</b> 2 negative references, related to impact analysis	<b>CC1:</b> 8 negative references, all related to enforcement failures  <b>CC2:</b> No references
Perceived agency/applicant bias	<b>EC1:</b> 6 references, all related to agency  <b>EC2:</b> 4 references, all related to agency	<b>CC1:</b> 10 references, 4 related to state agency, 6 to local agency  <b>CC2:</b> 7 references, all related to agency
<b>Applicant bad faith</b>  History of non-compliance, poor community relations	<b>EC1:</b> Repeated references to applicant's history of non-compliance on the site; third most common voiced complaint (481 references).  <b>EC2:</b> No mention of applicant non-compliance or poor community relations	<b>CC1:</b> Repeated references to applicant's history of non-compliance on the site; 11 of 22 speakers raised this issue, most frequently voiced complaint (17% of all unique hearing statements)  <b>CC2:</b> No mention of violations; 3 references to poor applicant-community relations; 1 reference to improved applicant-community relations
Refusal to answer questions	<b>EC1:</b> None  <b>EC2:</b> Two refusals, both related to applicant profits or finances	<b>CC1:</b> None  <b>CC2:</b> One refusal related to applicant profits or finances
Perceived applicant bad faith	No direct references	No direct references
<b>Equitable treatment</b>  Perceived inequitable treatment over time or compared to others	<b>EC1:</b> 34 references, typically related to incinerator  <b>EC2:</b> 12 references, related to number of energy projects in community	<b>CC1:</b> 8 references, related to placement of unwanted land uses in community  <b>CC2:</b> 12 references, related to pollutants in community.
<b>Consistent process</b> Deviations	None found in either case.	None found in either case.

Source: Interview/Document references.

versus 10 environmental justice references), but survey respondents were similarly negative about agency bias (average rating of 1.9 in environmental justice cases compared to 2.0 in comparison cases) (see Table 6-2). Similarly, there were minimal differences in the number or focus of complaints regarding agency competence between the environmental justice and comparison cases. These concerns were raised most often in the solid waste cases and tended to focus on improper or inadequate impact analysis. For instance, one interviewee described the environmental impact statement for the EC1 projects as “the work of a C student in a high school class...totally superficial and cobbled together” (EC1I17), while CC1 participants questioned specific aspects of the technical analyses done for that project. Survey responses also show comparable agency competence ratings between comparison and environmental justice groups (see Table 6-2).

Environmental justice group respondents referenced inequitable treatment of or disproportionate burdens imposed on their communities more often than comparison group respondents (46 environmental justice references and 21 comparison references), suggesting that the process was perceived as less fair. However, this difference was driven by a particularly heavy emphasis on inequity in EC1 (34 references). With this case removed, the remaining cases cited this concern at comparable rates.

Interestingly, environmental justice was raised most explicitly in CC2, where most references to inequitable treatment (9 of 13) used language like “[f]or us, it was a question of environmental justice” or “[the applicant does] nothing for the people who have no voice and bad health” (CC2 Legislative Hearing). Although seven EC1 references were similarly direct, they focused on historical or geographical inequities without reference to race, ethnicity, class or political power. For example, one respondent noted that “[t]his neighborhood has done its share

for 30 years” (EC1 Comments on NOCA), while a community flyer noted that “[t]his plan may stop truck traffic, but not in our community” (EC1 Community Update Flyer). In EC2, despite the involvement of an environmental justice organization and the application of the EJ policy, there was only one community reference explicitly framed in terms of environmental justice. The application of the EJ policy, therefore, does not seem to inflate claims of inequitable treatment or those explicitly framed in terms of environmental justice.

Overall, there were no significant or consistent differences in the data related to objective or subjective measures of fair process. Based on this data, I hypothesize that New York’s EJ policy has no systematic effect on fair process as a criterion of effective public participation.

### **C. Impacts on Voice**

The criterion “voice” is measured by full voice, influence, access to decision-makers, information added, and changes to the permit itself or to the review process. Table 6-6 provides a summary of voice-related data drawn from interviews and document review. Although voice was one of the three most important effectiveness criteria, as indicated by the number of references in the record, there were clear differences in the relative emphasis within environmental justice and comparison cases with comparison case participants more focused on this issue (see Table 5-1). Overall, the measures of voice are more positive in environmental justice than comparison cases. However, intra-category differences within environmental justice and comparison cases suggests that other factors, such as applicant attitude or community strength, are also important to ensuring that participants have an effective voice in the process.

As described in Table 6-6, there was greater structural access to decision-makers within the environmental justice cases due to the additional meetings and outreach required under the EJ

**Table 6-6: Summary of Data Related to Voice**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Full voice</b> Perceived ability to speak freely and fully	<b>EC1:</b> 4 positive references, 6 negative references. <b>EC2:</b> 1 positive reference	<b>CC1:</b> 1 positive reference, 1 negative reference <b>CC2:</b> 1 positive reference, 1 negative reference
<b>Influence</b> Perception of influence	<b>EC1:</b> 3 negative references <b>EC2:</b> 1 positive reference	<b>CC1:</b> 13 negative references, 1 positive reference <b>CC2:</b> 2 negative references
Perception that decision made (counter)	<b>EC1:</b> 14 references made from 9 participants <b>EC2:</b> 2 references from 1 participant	<b>CC1:</b> 22 references from 8 participants; 3 opposing references, all from agency <b>CC2:</b> 3 references from 3 participants
<b>Access to decision-makers</b> Perceived access	<b>EC1:</b> 1 negative reference, 4 positive references. All but one related to informal access. <b>EC2:</b> 1 positive reference, related to informal access.	<b>CC1:</b> No references <b>CC2:</b> 2 positive references, both related to informal access.
Structural access	<b>EC1:</b> 1 hearing, permit hearing, written comments <b>EC2:</b> 3 EJ hearings, permit hearing, multiple applicant meetings with community groups, written comments, e-mail comment port	<b>CC1:</b> permit hearing, county agency hearing, written comments <b>CC2:</b> permit hearing, written comments
Direct responses	Formal responses to comments from all public meetings/hearings issued by applicant or agency	Formal responses to comments from public hearing issued by agency
<b>Information added</b> Relevant concerns surfaced/New information added	<b>EC1:</b> 12 distinct new issues or relevant facts <b>EC2:</b> 5 distinct new issues or relevant facts	<b>CC1:</b> 5 distinct new issues or relevant facts <b>CC2:</b> None added
<b>Changes to permit or process</b>	Detailed in Table 6-7	Detailed in Table 6-7

Source: Interview/Document references.

policy. This additional formal access did not prompt more positive participant assessments, however, as all but one positive reference in the record referred to informal access outside the regulatory process. Although responses to comments were more voluminous in the environmental justice cases than the comparison cases, this seems to simply reflect the relative number of participants and formal participation opportunities.

Overall, there was little difference in perception of full voice between environmental justice and comparison cases. The few comments made in each case split between positive and negative assessments with the negative assessments generally focused on external barriers to full engagement or procedural rules that limited the scope of relevant contributions. However, the freedom to speak within the public process did not necessarily translate into a perception of influence. Although participants in the comparison cases were far more vocal about this issue with almost two-thirds of voice-related comments complaining of lack of influence (50 of 75 references) compared to one-fifth of environmental justice case comments (19 of 101 voice-related references), participants across all cases were nearly unanimous in complaining that they had no influence over the review process or ultimate decision.

Interviewees variously described testifying at public hearings as comparable to talking to a meat slicer, a stump, or a wall (CC1I1, CC1I5, CC2I7). Every CC2 interviewee and many hearing speakers characterized the proposed solid waste facility expansion as a “done deal.” And one complained that “Jesus could have...said this [permit modification] is not good. And they would have said, too bad” (CC1I1). An EC1 participant noted that “people got a chance to say things, but...you can say all you want. I don’t think it matters... I think that they...listen and then they do what they want” (EC1I2), while other respondents characterized the EC1 facility as “a fait accompli” (EC1 Written comments) or “a lost cause” (EC1I6). A CC2 interviewee felt that

the applicant “worked out a deal with the state agencies before it was even announced that they were going to...do this” (CC2I8). Similarly, an EC2 interviewee noted that “some guy from the Community Board said this whole thing is about money and they’re going to do whatever they want. And I think he was right” (EC2I2).

Survey results were more mixed (see Table 6-2). Although comparison group respondents did not believe they influenced the process or decision (average rating of 1.74), environmental justice group respondents indicated weak agreement with statements indicating public influence over the agency (average rating of 2.25). This disparity may simply reflect the tendency to complain loudly and appreciate quietly. Alternatively, it may reflect higher expectations of influence among more deeply engaged participants, particularly given the frequent invocation of more nuanced concerns, such as the lack of thoughtful or individualized responses from the applicant or agency or the limits to public influence.

Four of the seven EC1 interviewees, for example, noted that their comments were always addressed, but only with pat answers. For example, one participant complained that “[i]t’s not like [the applicant] would say, oh my god, you’re right. Maybe we need to do something. The answers were always there” (EC1I2), while another complained that “the bottom line is, no matter what you raise as an issue, they say, well, we looked into that and...trust us, there’s no problem” (EC1I3). Such “group-tested talking points” can be perceived as a failure to take the public seriously (Hecl, 2011). In addition, two interviewees complained that process or project changes weren’t justified or tied to community requests. One interviewee complained “I don’t remember...anybody really ever saying, oh, we got that [change]. Good for us.” (EC1I2). Another noted that “There were additional conditions placed. Some of them were beneficial...But never as a result of the hearings. I think it was the result of...what went on

behind the scenes” (EC1I4). In EC2, one interviewee felt that any influence by community members required a willingness to avoid being “too hostile or too critical” and that this limitation was too high a price to pay for influence (EC2I2). The only EC2 interviewee to speak positively about the community’s influence over this project attributed it to “the strength of the community’s involvement” and the applicant’s recognition that an involved community can “slow down the process [and] cost a lot of money [and] bad press” (EC2I3).

Despite these negative assessments of influence, community members were able to inject new concerns or add information to the review process more effectively in environmental justice cases and generate more changes in the review process and project design. Most of these new concerns or facts were added to the solid waste facility projects (12 in EC1 and 5 in CC1) compared to the power generation projects (5 in EC2), which may reflect the technical nature of the latter projects. The responses to new concerns or facts varied between cases with no consistent pattern within environmental justice and comparison cases or within matched cases.

As reflected in Table 6-7 below, which summarizes the process and project changes in each case, comparison case applicants were less responsive to community requests for change than environmental justice case applicants. Environmental justice communities were particularly influential in terms of process changes, while the results for substantive project changes were mixed. These results were skewed by the significant number of changes made in EC2. In fact, there were more substantive permit changes in a comparison case (CC1) than in the environmental justice case (EC1).

Within the comparison cases, both agencies made process changes of the type specifically envisioned under regulatory norms. For instance, in response to public requests, the CC2 agency offered a public hearing and extended the comment period. The CC1 agency also

held its permit hearing in the affected community as requested by community members (CC1I1, CC1I2, CC1I5), although this may not reflect a change since one agency staffer described permit hearings within the host community as the new norm (CC1IA4). With respect to substantive changes in review or permit terms, however, agency responses varied sharply.

**Table 6-7: Process and Project Changes by Case**

	<b>Process changes</b>	<b>Additional Research</b>	<b>Project Changes</b>
<b>CC1</b>	1 change (hearing venue)	2 post-permit studies to confirm noise and traffic impacts	5 substantive changes related to overnight waste handling, staging of trash trailers, non-commercial facility users, and truck routes; 7 clarifications or corrections
<b>CC2</b>	2 changes (extended comment opportunities)	None	None
<b>EC1</b>	4 changes (outreach, hearing venue, extended comment opportunities)	1 pre-permit analysis (new); 1 post-permit study	4 substantive changes, 1 clarification/correction
<b>EC2</b>	8 changes (outreach, meeting venue, extended comment opportunities, technical assistance with project information)	5 pre-permit analyses (new or expanded)	12 substantive changes

Source: Document references.

Based in part on the level of community concern, the regulatory agency in CC1 required two additional post-permit studies to confirm projected impacts, mandated five substantive project changes, and clarified or corrected seven permit terms (see Table 6-7). In contrast, the CC2 applicant offered and the agency required no additional review or permit changes in response to community suggestions.

Environmental justice case applicants were generally responsive to community concerns regarding process. The EC2 applicant, in particular, was open to changes in outreach, seeking advice from an established community group and going far beyond the normal scope of outreach to implement those suggestions. The director of that community group noted that:

a lot of the outreach...happened the way that we had recommended. So we think that we played a substantial role in making sure that there were translations. That they met frequently with community members in places that were accessible to the community. That information was presented in culturally appropriate ways to the various groups in the communities, whether they be Chinese, Arab, Latino....[A]ll the different groups had access to information and had answers. That the meetings were held at times that were available to our community. That there would be food. People were coming straight from work and had children....We asked that they...not speak engineer speak, that they break the information down so that people would be able to process it and give their input. And so I think that they worked really hard to do all those things. It's actually surprising how much they did. (EC2I3.)

In addition to the changes mentioned above, the applicant arranged on-site visits and additional meetings, and funded a technical assistance grant to a coalition of community organizations. In addition, DEC approved an extended comment period in this case.

Process changes were also made in EC1. However, only four small-scale modifications were made, related to changes in the initial notice list, meeting venue, time for comments, and the provision of a permit hearing (EC1I6). The EC1 applicant did not appear willing to make major changes in its planned outreach. For example, although the EJ meeting was intended to create dialogue, agency staff acknowledged that efforts to answer questions “were not well-received. You know, there was some booing. Some people calling out” (EC1IA1). Staff members at the meeting stopped trying to answer questions and “let [the public] say what they wanted to say about the project” (EC1IA1). The applicant recognized that this was a failure of sorts and explained that it “got better at insisting on responding” in environmental justice

meetings for subsequent projects. However, it did not hold any additional meetings or create other opportunities for dialogue in the EC1 community.

There was a similar imbalance between EC1 and EC2 in terms of additional analyses and changes to the project. The EC1 applicant investigated only one new concern raised by the community, which related to potential issues with project-related dredging (EC1IA1). For the most part, community members complained that the applicant either conceded the point without additional analysis or relied on existing data as a sufficient reply. For example, one interviewee noted that “if we raised concerns, what they did was say, okay, we’ll do it” (EC1I3), while another complained that “[the applicant] just let the individuals talk and then point[ed] to the documents” (EC1I3). The EC2 applicant, on the other hand, conducted extensive analyses in response to community concerns, performing five additional or expanded studies (new analyses of cumulative health impacts including asthma rates, ambient air quality, the potential impacts of a storm surge, potential waterfront access at the site, and, with the regulatory agency, particulate emissions at facility boundaries including emissions from a related facility). The director of the established community group expressed her appreciation for this willingness to engage community concerns, noting that the applicant:

tried the best they could to try to incorporate the concerns that people raised... They were open to setting up... meetings so that people could meet the engineers, meet the workers, see the facility themselves and conceptualize the concerns that people were raising. (EC2I3.)

Within the EC2 case, there were 12 substantive changes to the project or permit. Most of these changes might be considered tangential, as they related to facility aesthetics (on-site shrubbery, change in stack color, and creation of green wall and green roof), energy efficiency (LEED certified building, solar panels), community benefits (on-site educational space) and permit language (explanation of project benefits). However, the remaining five changes related

to central issues of emission reductions and enforcement. In addition to minor changes related to fuel oil sulfur limits and early equipment changes, the EC2 applicant committed to overall reductions in emissions in the area, which required emission reductions in a related facility not covered by the permit at issue. In response to community concerns about enforceability, the applicant entered a binding agreement with several community groups to reduce emissions at the related facility<sup>30</sup> and agreed to informal community access to emission monitoring data.

In contrast, the EC1 applicant agreed to only one substantive change (the use of silt curtains during dredging) and the agency imposed one additional condition (appointment of an independent environmental monitor) during the public review period.<sup>31</sup> The applicant described other project elements, such as the ventilation system, the decision to load and lid container in the building and a reduction in night-time truck deliveries, as responsive to community complaints about prior or similar facilities. However, these changes were either incorporated in the initial design or made before the public participation process under review.

Based on these results, I propose that the EJ policy has a conditional effect on voice. Although the EJ policy ensures greater structural access to decision-makers, it does not enhance participant perception of influence. While there are greater opportunities for actual influence, in the form of changes to the review process or the project itself, factors external to the policy may determine whether these opportunities are realized.

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<sup>30</sup> Technically, the applicant agreed that the emission reductions would “run with the land,” meaning that the agreement to maintain the lower level of emissions in perpetuity would be included in any transfer of the property.

<sup>31</sup> Two additional changes (enhanced public access to facility information and the independent environmental monitor) were made during an administrative appeal process. Because such appeals are quasi-judicial processes separate from public review, these changes were not considered in measures of voice.

#### **D. Impacts on Deliberative Dialogue**

As described in Chapter 5, deliberative dialogue is measured by actual dialogue, use of public justifications and understanding of opposition. Table 6-8 below summarizes the dialogue-related data drawn from interviews and document review. Although there are more observable instances of dialogue and more emphasis on dialogue in environmental justice cases, there is significant intra-group variation and high levels of participant dissatisfaction. In addition, measures specific to deliberative dialogue, such as reliance on public justifications, and benefits attributed to deliberative dialogue, such as increased understanding of opposing perspectives, are largely absent. Thus, although the EJ policy may promote some form of dialogue, it cannot be characterized as deliberative dialogue. Further, the variation between environmental justice cases suggests that even this more limited dialogue depends on external factors.

Objective measures of dialogue favored the environmental justice cases (38 instances) over comparison cases (12 examples). These exchanges, drawn from the documentary record only to avoid recall bias, included actual discussions during meetings or hearings or written exchanges over time. All such exchanges were assessed for detailed explanations, direct answers, detailed or new information, and responses that incorporated opposing data or perspectives and were categorized as minimal, repeated, partial, or full. Only the full responses were counted as instances of dialogue.

Most of instances of dialogue in the comparison cases occurred in CC1. Three reflect actual discussions at the permit hearing, where agency staff engaged in several lengthy discussions with the public and the applicant. For example, in response to repeated public questions about prior violations and the lack of enforcement at the facility, agency staff explained that “while we knew [the facility] was exceeding capacity, there was a claim they were

**Table 6-8: Summary of Data Related to Deliberative Dialogue**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Actual Dialogue</b>  Observable discussions (defined as a “meaningful response” by applicant or agency to public questions or documented instances of actual discussion)	<b>EC1:</b> 14 instances. Also observed 16 minimal and 9 repeated responses  <b>EC2:</b> 24 instances. Also observed 6 minimal, 2 partial, and 2 repeated responses	<b>CC1:</b> 10 instances. Also observed 17 minimal and 2 repeated responses.  <b>CC2:</b> 2 instances. Also observed 1 minimal response.
Perception that questions answered	<b>EC1:</b> Questions answered -- 4 participants; not answered – 3 participants; scripted answers-- 3 participants  <b>EC2:</b> Questions answered -- 1 participant, staged or scripted answer -- 1 participant	<b>CC1:</b> Questions answered -- 1 participant; scripted answers – 3 participants  <b>CC2:</b> Questions answered – 2 participants; not answered – 1 participant
Perception that concerns resolved	Only positive assessment from applicants	No positive assessments
<b>Public justifications</b>  Reliance on broadly accepted public concerns	<b>EC1:</b> 13 community, 2 applicant  <b>EC2:</b> 3 community, 4 applicant	<b>CC1:</b> None  <b>CC2:</b> 2 community
Reliance on personal experience or regulatory compliance (counter)	<b>EC1:</b> 33 community; 4 applicant  <b>EC2:</b> 14 community, 3 applicant	<b>CC1:</b> 4 community, 10 applicant  <b>CC2:</b> 3 community, 4 applicant
Reliance on bureaucratic or technical language	None	None
<b>Understanding of opposition</b>  Public understanding of applicant interests/agency understanding of community concerns	6 positive references (4 community understanding, 2 applicant understanding)	7 positive references (5 community understanding, 2 applicant understanding)

Source: Interview/Document references.

not. And they were entitled to their litigation that took years” (CC1 Permit Hearing). The agency also referred several questions during and after the hearing to the applicant and consulted with

other agencies to draft its final response to comments, which included seven answers characterized as full responses. In contrast, the CC2 permit hearing included no discussion and only two examples of dialogue in other documents, both providing more complete explanations of the applicant's project.

Within the environmental justice cases, almost two-thirds of the instances of dialogue came from EC2 and, unlike the comparison cases, all but one came from written responses to comments. The EC1 applicant provided 14 written responses that were characterized as dialogue because they contained direct answers, new information or more detailed data. For example, in response to concerns about the impacts of dredging, the applicant provided the following specific and nuanced rationale for judging the process to be safe: “[t]he claim of bioaccumulation ignores the chemical and physical properties of the sediments....The binding and adsorption of chemicals to the sediment would prevent them from instantaneously dissociating during dredging” (EC1 Report on Public Participation Completion, EC120). However, the EC1 applicant was more likely to repeat data already provided or give unsupported reassurances (25 responses). For example, community members were particularly concerned about truck traffic and raised questions about specific elements of the traffic analysis. The applicant's standard response was simply that, despite “the higher number of trucks...there were no unmitigable impacts” (EC1 Environmental Justice Meeting, EC1D67) or that the analysis followed state guidelines.

The EC2 applicant and agency were even more open to conversation, as reflected by an applicant representative's description of the public process as “an interaction and an iterative process to come up with what makes business sense to us and makes environmental sense to the community” (EC2IA4). The record includes 24 examples of unique and detailed responses. For

example, in response to community concerns about higher and potentially dangerous emission levels in summer, the applicant gave a multi-layered response, directly addressing the question and expanding on prior discussions:

[First, the proposed new unit] produces much lower emissions [and] will cause the existing units with higher emissions to be operated less hours in a day, even in the summer during high energy demand days. Second, natural gas is more readily available in the summer so the units that can burn gas are normally started up first before the oil units.... Third, the conversion to ultra low sulfur diesel fuel will reduce emissions when the oil-only units are run. (EC2 Information Sheet, EC2D9.)

The EC2 applicant also provided some responses characterized as minimal or partial. For example, in response to public questions about reducing emissions further by placing comparisons on older turbines, the applicant stated “annual emissions of criteria pollutant [will be] reduced below the baseline. This is a positive effect. The LMS100 emissions have been demonstrated...to be insignificant” (EC2 Response to DEIS Comments, EC2D38). However, full responses in this case outnumbered minimal, partial or repeated responses by more than two to one. Most tellingly, both the EC2 applicant and the agency actively negotiated with community representatives on the scope of project analysis, the written explanations provided for permit terms and permit review, and the terms of a binding agreement to ensure certain emission reductions.

Survey data reflected these objective differences between environmental justice and comparison cases and the differences between the two environmental justice cases (see Table 6-2). Although perceptions of dialogue were negative overall, comparison case respondents were slightly more negative (average score of 1.64) than environmental justice case respondents (average score of 1.91) and the most positive assessments came from EC2 respondents (average score of 2.13). Participant assessments within the record were far different, with more positive

references to dialogue in the comparison cases (11 positive in 47 community references to dialogue) than in the environmental justice cases (12 positive within 131 community references to dialogue). This discrepancy may reflect lingering impressions from prior interactions with the applicant (“when we were negotiating with [the applicant], they grew more willing to listen to us as we persisted” (CC2I7)) or with state and local regulatory agencies (CC1) (“when I went to the [county agency] work session for the issue...I got great questions, they seemed concerned” (CC1I2)). However, the larger component appears to be differing expectations.

When asked whether there had been dialogue between the public and the applicant, comparison participants cited almost any bare exchange of information. One interviewee responded that “[t]here was back and forth...[although] the back and forth was more with [the staff]” (CC1I5), while another responded “I think they discussed [our concerns]. Points were made” (CC2I1). Most examples of dialogue were offered without direct critique. The rare exception was a CC2 interviewee who complained that participants “were able to raise questions and get answers, but whether people were happy with those answers is something else. It just ended up being more questions” (CC2I3). Only three interviewees, all in CC1, complained of scripted or redundant applicant/agency responses.

Environmental justice case participants, on the other hand, tended to couch the dialogue examples offered in partially condemning tones. Answers were described as staged or scripted in fifteen comments from five interviewees. Interviewees noted that “the bottom line is, no matter what you raise as an issue, they say...we looked into that and there’s basically no problem...Trust us” (EC1I3) or “it was like a dog and pony show...They were well rehearsed” (EC2I5). Answers were criticized as incomplete or partial. Typical complaints included statements such as “[t]here’s always conversation and...they try to answer some of the questions.

Some of the comments.” (EC1I4) and “[y]ou could [ask questions]...if you didn’t understand something, but you couldn’t get into a dialogue.... I couldn’t say, how are you going to clean up the environment” (EC2I5). Other participants complained that answers were only available through informal channels (EC2I5). Participants wanted responses that demonstrated understanding or deep listening. One interviewee described this deep listening as “hear[ing] what I said [and] asking me questions on that topic...not answering me with platitudes [which is] what you get from agencies” (EC1I3).

The structure of hearings may also be important for these measures. The most positive assessment within the environmental justice cases came from the director of an established community group engaged in EC2, who praised the dialogue generated at a meeting where the applicant created “different stations where people could go one on one and ask questions....[The applicant was] there for hours....[P]eople I didn’t think felt rushed” (EC2I3). The applicant in that case provided multiple meetings with varying formats. The remaining cases relied heavily on formally structured public meetings or permit hearings with only one or two such opportunities provided.

Environmental justice cases saw greater reliance on public justifications than comparison cases with community members invoking such arguments more often than applicant representatives or agency staff. The use of public justifications, or reliance on generally accepted values or norms to explain or support a position, is a key element of deliberative dialogue. In the cases reviewed, statements that relied on public concerns, such as protecting public health or making decisions based on complete data, were counted as public justifications. Using this marker, there were 22 instances of public justifications in the environmental justice cases with the majority (13) made by EC1 community members and the remainder relatively evenly split

between the EC1 applicant (2), the EC2 applicant (4) and EC2 community members (3).

However, the public justifications raised by EC1 community members raised the same three issues – the adequacy of the traffic study, the presence of mercury and other toxics in sediment to be dredged, and the effect of mercury and other toxics on fish and wildlife – using similar language and relying on the same studies. This suggests that, rather than engaging in meaningful dialogue, EC1 participants were marshalling talking points developed and agreed upon by the coalition opposing the facility.

Participants across all cases were more likely to rely on personal experience than public justifications. Community participants made comments coded “personal experience” in 43 instances with most (33) delivered in EC1 and more limited reliance in the remaining cases (3 EC2, 7 CC1 and 3 CC2). About half of the personal experiences raised by the community raised specific concerns amenable to discussion, such as experiences with the traffic impacts, truck or facility noise or the ‘black muck’ in areas to be dredged. Others were simply passionate rhetoric. For example, one EC1 public hearing speakers complained that “I worry about [my son] getting sick or cancer from living so close to waste” and asked “would you want this garbage built right near your family?” (EC1 Legislative Hearing, EC1D42). Another testified about the prior incinerator and “began coughing toxins into the air we breathe the year I was born,” and the “brave attorney [who] took on the fight to close...this toxic monster” (EC1 Legislative Hearing, EC1D56). These statements appear more suited to calls to action than deliberative dialogue and, in fact, two participants stated that they viewed public comment opportunities as a way to organize or engage with other project opponents rather than engage with the applicant.

Applicants and agency staff also invoked non-public justifications in the form of bare claims of regulatory compliance. However, the reliance on regulatory justifications does not

follow the data trends in other measures of dialogue with more such statements from the EC2 applicant (14) and the CC1 agency (10) and a limited number in the other cases (4 each). Given the other indicators that the EC2 applicant and CC1 agency were most willing to engage in dialogue, this deviation may simply mean that, with more conversation, there may be more discussion of regulatory minimums.

Finally, there was little indication that the participants developed a better appreciation of the other side's interests split evenly between environmental justice and comparison groups. Most community participants continued to view the applicant's motivations as profit (CC1I1, CC2I2) or convenience (EC1I3, EC1I4). Applicants, on the other hand, felt that community opposition was based on irrelevant issues or a global rejection of industrial facilities. As one applicant noted, these residents are "more concerned about just the general presence of such a facility...than specifics of any of the changes we were proposing" (CC2IA5).

The structure of the dialogue may be most important in increasing understanding between stakeholders. One applicant, for example, saw movement in community opinion where information was presented in different settings, such as a community workshop or individual meetings. The EC2 applicant representative noted that "we gave a presentation that really drilled down on how [current and future] emissions...related to each other. And I think we were successful and many of the people understood it" (EC2IA4). Similarly, a CC2 applicant representative stated that "elected people...raised the questions...we had dialogue with them [and] they did not raise...issues at the hearing" (CC2IA6). Community members only saw movement where the process allowed for repeated and extended interactions. One CC2 interviewee described her group's earlier successful campaign by stating "there were two people...negotiating with us for a while.... And I think by dint of seeing us as just working

people like themselves who were putting a lot of time and effort into this...they grew more willing to listen to us as we persisted” (CC2I7). Several participants agreed that, where formal hearings provided no room for dialogue, they turned into simple “gripe sessions” where people could “rant” about their concerns (EC1I3, EC1I14)

These alternative models of engagement may be successful in creating dialogue, but they also raise concerns about exclusion of dissenters or those unable to speak “reasonably” about the issue and may create pressure to achieve consensus through conformity rather than by finding a true common good (Fung, 2004; Young, 1996; Mansbridge, 1980). Such problems are suggested by critiques of the EC2 process, where one interviewee complained that “[the applicant] really didn’t listen to anyone that was too hostile or too critical” (EC2I2). The alternative meetings cannot be evaluated to determine whether they were limited to less hostile or critical participants, however, since conversations within these small group meetings were not recorded.

Overall, I hypothesize that application of the EJ policy can facilitate improved dialogue between applicants and community residents. However, as with the criteria of voice, external factors are important in determining whether potential improvements are realized. In addition, because key markers of deliberative dialogue are largely absent, the resulting exchanges are better characterized as a more limited form of dialogue.

#### **E. Impacts on Recognition:**

Recognition, as a criterion of effective public participation, has two distinct components – social recognition and institutional recognition. Overall, both forms of recognition appear stronger in the environmental justice than comparison cases. However, based on the distribution of references overall, institutional recognition seems more important to environmental justice

cases participants than comparison case participants, while the reverse is true for social recognition (see Table 5-1).

### **1. Impacts on social recognition**

Social recognition is measured by respect for individuals and efforts to welcome individuals into the existing review process. Table 6-9 summarizes the interview and documentary data related to social recognition. This criterion was not a primary concern of either the environmental justice or comparison communities, but was rated more positively within the environmental justice cases, particularly for objective measures. Interestingly, concerns regarding lack of recognition focused on actions by the applicant or local agencies involved in the project review rather than the state regulatory agency.

Based on the number of references, respect for individuals was a larger concern in the comparison cases than in the environmental justice cases. There were only four complaints from interviewees in environmental justice cases, such as the EC2 interviewee who described the applicant's spokesperson as "very arrogant" (EC2I2) and the EC1 interviewee who complained that that applicant told community members "we wouldn't understand the answer" to questions about chemical use at the facility (EC1I6). More often, applicant and agency staff were described as polite or respectful. Similarly, survey respondents within the environmental justice cases tended to agree that agency staff treated the public respectfully (average social recognition score of 2.59) (see Table 6-2).

In contrast, participants in comparison cases raised the issue more often (31 times) and in overwhelmingly negative terms. Much of this frustration centered on the applicant or other involved agencies. CC1 participants were particularly vocal about disrespectful and dismissive

**Table 6-9: Summary of Data Related to Social Recognition**

	<b>Environmental justice Cases</b>	<b>Comparison Cases</b>
<b>Individual respect</b>  Demonstrated respect (use of titles, paying attention, lack of time limits or dismissiveness)	<b>EC1:</b> 6 positive, 2 negative references/examples  <b>EC2:</b> 1 positive, 1 negative reference/example  <b>Overall:</b> 7 positive, 3 negative references	<b>CC1:</b> 7 negative references/examples  <b>CC2:</b> 2 positive, 3 negative references/examples  <b>Overall:</b> 2 positive, 10 negative references
Perceived respect for individuals	<b>EC1:</b> no references  <b>EC2:</b> 1 negative reference  <b>Overall:</b> 1 negative reference	<b>CC1:</b> 2 positive, 7 negative references  <b>CC2:</b> 1 positive, 9 negative references  <b>Overall:</b> 3 positive, 16 negative references
<b>Welcoming individuals</b>  Direct notice/ mailing lists	<b>EC1:</b> 3 positive, 6 negative references (comm.). 750 named individuals on mailing list. 3 positive examples of direct notice.  <b>EC2:</b> 2 negative reference (community). Unknown number of named individuals on mailing list. Four applicant examples of direct notice  <b>Overall:</b> 3 positive, 9 negative references	<b>CC1:</b> No references. 17 named individuals on mailing list.  <b>CC2:</b> 1 positive reference (comm.), 2 negative. No named individuals on mailing list.  <b>Overall:</b> 1 positive reference

Source: Interview/Document references.

treatment by a county agency. For example, interviewees complained that they “were totally ignored and then only given 5 minutes each to speak” (CC1I2) and that “[i]f you had a point to make...[a]ll of a sudden, you were cut off” (CC1I5). One interviewee also noted that “they tend to ignore women...to discount you as just this crazy lady” (CC1I2). CC2 interviewees focused on the applicant, who was described as thinking that community activists were “a bunch of

hysterical little old ladies,” (CC2I7) and treating the public as “just some annoying chore” (CC2I2). Survey results confirm this distinction between the state agency and other players. Survey questions were specific to respectful treatment by the agency and, despite the strongly negative reactions of interviewees in the comparison cases, participant respondents in both environmental justice and comparison cases rated the agency positively on this measure with the comparison average slightly higher (average score of 2.58 compared to 2.43) (see Table 6-2.)

The second measure of social recognition, welcoming individuals into the process, was also not a significant concern to either group of cases. The objective measures of social recognition in the environmental justice cases were significant, including large mailing lists (750+ named individuals on the EC1 mailing list) and extensive efforts to provide translation services for individuals with limited English abilities. Interviewees typically only raised this issue in response to direct questions and then gave mixed assessments. Despite the extensive outreach and the fact that all interviewees were drawn from applicant mailing lists, three EC1 interviewees and one EC2 interviewee stated that they had gotten no mailings or direct notice from the applicant or agency (EC1I5, EC1I6, EC1I8, EC2I5) and three other EC1 interviewees described limited or sporadic contacts (EC1I2, EC1I3, EC1I7). Within the comparison cases, there were only three community references to this measure, two of them negative.

Based on these results, I hypothesize that social recognition may be improved by the application of the EJ policy. Participant assessment of individual respect within the environmental justice cases was more positive than in comparison cases, although it remained mixed. In addition, the outreach requirements of the EJ policy encourage the kind of personal contact defined as being welcoming to individuals.

## **2. Effects on institutional recognition**

Institutional recognition is defined as respect for community and accommodation of community concerns, particularly those outside the usual scope of action. As with social recognition, the results for institutional recognition are mixed. Table 6-10 below summarizes the interview and documentary data related to institutional recognition. Applicants and agency staff in all cases emphasized institutional recognition more than community members and environmental justice case participants were more focused on and more positive about this measure than comparison case participants (see Table 5-1). However, like voice and dialogue, differences in the data between the environmental justice cases suggest that factors other than the EJ policy may be important in ensuring institutional recognition.

Respect for the community was not a significant concern in any of the cases with a negligible number of overall references. Measures related to respect for the community was rarely mentioned within the comparison cases, either positively or negatively. Local elected officials were given early notice of the permit application, but there is no evidence of notice directed or tailored to community groups. As a result, one CC2 interviewee stated that “it just sort of seemed that they didn’t really want to hear that much from a lot of different people. They really just wanted to keep this clean and in their own backyard” (CC2I2). However, survey results indicate that this limited community engagement does not translate into a perception of disrespect (average CC1 score of 2.25; average CC2 score of 2). Respect for community was a larger issue for environmental justice case participants, who referenced direct or community-specific notice and outreach 16 times. Interestingly, seven of the eight EC1 comments were negative, while six of the eight EC2 comments were positive. This stark difference was also reflected in survey results (average score of 2.43 in EC2 for “respect for community” compared

**Table 6-10: Summary of Data Related to Institutional Recognition**

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
<b>Community respect</b>  Direct notice/outreach to community groups	<b>EC1:</b> Direct notice to churches, schools, elected officials, community groups (149 entities)  1 positive community reference  <b>EC2:</b> Direct notice to churches, schools, elected officials, community groups (59 entities)  2 positive, 1 negative community references	<b>CC1:</b> None  <b>CC2:</b> Contacted Community Board, local officials
Community-specific notice, outreach	<b>EC1:</b> Translation services; outreach through centers of community activity  7 negative community references  <b>EC2:</b> Translation services, outreach through local businesses, tailored small group meetings; adaptive outreach and meeting design  4 positive, 1 negative community references	<b>CC1:</b> None  No community references  <b>CC2:</b> Early conversations with local elected officials  1 positive, 2 negative community references
Use of community terminology	None noted	None noted
<b>Accommodation of community concerns</b>  Community-driven analysis	<b>EC1:</b> 1 pre-permit study (no agency prompting)  <b>EC2:</b> 3 pre-permit studies (no agency prompting)	<b>CC1:</b> 2 post-permit studies (not required by regulation)  <b>CC2:</b> None
Expanded scope of review	<b>EC1:</b> No positive instances; 5 references to limited scope of review  <b>EC2:</b> 3 positive instances (1 by agency); 3 references to limited scope of review	<b>CC1:</b> 2 positive instances (consulted other agencies); 17 references to limited scope of review  <b>CC2:</b> 3 references to limited scope of review

	<b>Environmental Justice Cases</b>	<b>Comparison Cases</b>
Engaged explanations	<b>EC1:</b> 14:15 (ratio of full response to minimal response); 13 negative references <b>EC2:</b> 23:6; 1 negative reference	<b>CC1:</b> 10:15; 4 negative references <b>CC2:</b> 1:1; 1 negative reference
Non-routine changes to permit or process	<b>EC1:</b> 1 project change (imposed by agency) <b>EC2:</b> 2 process changes, 2 major and 8 minor project changes (non-routine)	<b>CC1:</b> Designated off-site staging location for trucks waiting to load or unload <b>CC2:</b> None

Source: Interview/Document references.

to 1.73 in EC1). One key structural difference between the environmental justice cases may explain this stark split – namely, the static and self-designed outreach model applied in EC1 compared to the collaborative and evolving model used in EC2.

Both environmental justice applicants created outreach plans tailored to the community surrounding their proposed facility. In each case, applicants made efforts to translate notice and outreach materials and provide translators at meetings, to provide direct notice to known stakeholders, and to use creative outreach methods, such as posters in local business, flyers, and notices in non-traditional newspapers, to reach community residents. However, the public participation plan in EC1 was designed before consulting with the community and was adapted minimally, if at all, despite recognized implementation problems. On the other hand, the EC2 applicant consulted with community groups in designing the Enhanced Public Participation plan, which continually evolved as shortcomings became apparent or additional suggestions – such as the need for food at early evening meetings or the preference to host some meetings at local community group offices – were made. This flexible process allowed the applicant to tailor

outreach to the specific needs of the affected community, rather than the presumed needs of the community viewed from a distance.

Similarly, measures related to accommodation of community concerns favor the environmental justice cases generally and the EC2 case particularly. Environmental justice cases outscored comparison cases on every objective measure of accommodation of concerns, although this is largely driven by EC2 data. Survey results confirm this trend with environmental justice case respondents uniformly more positive about accommodation of community concerns than comparison case respondents (average score of 2.34 in environmental justice cases and 2.16 in comparison cases) (see Table 6-2).

Within the comparison cases, the scope of review was typically limited to the jurisdictional minimum. For example, the CC1 agency dismissed concerns over increased diesel emissions from project-related truck traffic by noting “[w]e don’t have jurisdiction over trucks on the road” (CC1 Public Hearing). Community concerns were more often dismissed as outside the scope of review within comparison cases (17 CC1 references; 3 CC2 references) than environmental justice cases (5 EC1 references; 3 EC2 references). Although the CC1 agency researched two minor questions outside its normal scope, both were addressed by simply forwarding the questions to other agencies and incorporating that answers in the response to comments. In addition, although both comparison case agencies addressed a range of comments, the answers were more likely (in CC1) or as likely (in CC2) to reflect a simple assurance that regulations would be met than more engaged explanations. The only project or review changes were in CC1 and were minor or relatively common, even if not required under the regulations.

The environmental justice cases considered jointly rated higher on the accommodation of community concerns measures, but this was almost entirely due to the actions of the EC2

applicant. With respect to community-driven analysis, expanded scope of review and non-routine project change, the EC1 applicant was roughly comparable to its matched case (CC1). Although the EC1 applicant provided more meaningful or engaged responses than in its matched case, it relied just as often on simple reassurances or truncated references to prior findings in the record – for example, “the potential impacts associated with the project have been thoroughly and carefully reviewed and...there are no potential unmitigable significant adverse impacts” (EC1 Legislative Hearing Comments, EC1D54). Community members frequently complained of this tendency (13 references), finding such responses dismissive and unsatisfactory:

If you read the documents that [the applicant] has put out,... they did the study and they've concluded that there is no negative impact.... Whether it's traffic, whether it's environment, whether it's noise, whether it's air quality.... So how do you argue with that? And they say, oh, I hear your concern. However, we have the experts, we did our reports, we looked at them and we concluded there will be no negative impact. Next. (EC1I3.)

The failure to provide engaged explanations, even for a substantive project change, left some community members uneasy. As one interviewee explained:

My position is basically, you have the experts.... They looked at the data. This is what they came up with. And now you're saying they're wrong. What else are they wrong about? Why were they right about everything else? So it brings into question the efficacy of...their experts.... And whether...their reports are nothing more than self-serving means to an end.(EC1I3).

However, the average survey score for relevant questions (“community heard”) in EC1 is higher than either comparison case (average score of 2.32 compared to 2.22 in CC1 and 2.07 in CC2).

In contrast, the EC2 applicant outperformed all other cases in terms of engaged explanations, community-driven review, and non-routine changes to the review process or project. Although the EC2 applicant was no more likely to expand its scope of review beyond regulatory requirements than the CC1 agency (3 documented instances), the expanded review undertaken was more detailed – consulting experts regarding the effects of a possible storm

surge, for example, and researching asthma rates within the community as part of a cumulative impact assessment even though the proposed permit modification would not increase asthma-inducing pollutants. Answers to community questions were routinely more detailed and direct, with 23 engaged explanations compared to 6 answers that relied on broad reassurances, regulatory compliance or reliance on prior studies. Community members seemed to recognize this effort, characterizing applicant or agency responses as relying on platitudes or bald reassurances in only four instances. Finally this applicant was far more likely to adopt non-routine process or project changes. Not every proposed change was accepted – for example, the EC2 applicant rejected multiple requests for more frequent or specific emissions monitoring and reporting. However, the applicant implemented eight minor project changes and two major project changes and two process changes (see Table 6-7). Relevant survey scores comport with the record data (average score of 2.4 for “community heard”).

Overall, the environmental justice cases provided greater institutional recognition than the comparison cases, although this result was skewed by much more positive results in EC2. Thus, I hypothesize that the structural changes required or encouraged by the EJ policy do not guarantee greater institutional recognition, but create the space for more effective efforts.

## **F. Impacts on Legitimacy**

Legitimacy is defined as the final criterion of effective public participation and is measured by process satisfaction, decision satisfaction, and increased trust in government. Table 6-11 provides a summary of the data related to legitimacy drawn from interviews, document review, and surveys. My original hypothesis was that legitimacy would increase along with those effectiveness criteria most closely tied to the underlying justice model of greatest importance to

the community. However, despite clear increases in access and social recognition and conditional increases in voice, dialogue and institutional recognition in environmental justice cases, increases in legitimacy measures were small and inconsistent.

Process satisfaction was slightly stronger in environmental justice cases than comparison cases, although the difference was minimal. Two EC2 interviewees expressed satisfaction with the process – strong satisfaction in one case and tentative in the other. As one participant noted, “as far as the way the hearings were presented, I think it was kind of fair enough” (EC2I2). In addition, two EC2 participants expressed satisfaction with the process on the record during the permit review process. No other interviewees or process participations described the review process as satisfactory. However, survey results related to legitimacy were negative in all cases, ranging from 1.36 in CC1 to 1.92 in EC1 (see Table 6-2). Survey respondents registered higher rates of process satisfaction in environmental justice cases (1.82) than comparison cases (1.4), although the responses were still negative.

Most interviewees were willing to take part in future permitting processes. However, this commitment was often explained by a sense of duty or contrariness, rather than an expectation that the process would be fair or meaningful. For example, an EC1 interviewee noted “I feel like the government is trying to make a fool out of us...So they’re not going to get me to shut up even if I don’t win” (EC1I6), while a CC2 interviewee stated “an injustice is an injustice. And...[m]aybe it’s not going to be the perfect answer. But I really feel we have to stand up” (CC2I7). Two EC2 participants and two CC2 participants reported that they were less likely to participate in future, because of disappointment with the process (EC2I1 and EC2I2), the time required (CC2I3) or the difficulty of collaborating with other community groups (CC2I2). Similarly, survey respondents almost universally indicated that they would participate in future

**Table 6-11: Summary of Data Related to Legitimacy**

	<b>Environmental justice Cases</b>	<b>Control Cases</b>
<b>Process Satisfaction</b> Self-reported satisfaction	<b>EC1:</b> No statements that process satisfactory <b>EC2:</b> 2 participants registered strong satisfaction; 1 described the process as “fair enough”	No participants described process as satisfactory
Process changes needed	<b>EC1:</b> 7 of 8 survey respondents (participant); 7 of 7 interviewees <b>EC2:</b> 2 of 3 survey respondents (participant); 4 of 4 interviewees	<b>CC1:</b> 6 of 7 survey respondents (participant); 5 of 5 interviewees <b>CC2:</b> 3 of 3 survey respondents (participant); 6 of 6 interviewees
Willingness to participate in future processes	<b>EC1:</b> 7 of 7 community interviewees <b>EC2:</b> 2 of 4 community interviewees; 1 hesitant, 1 unwilling	<b>CC1:</b> 5 of 5 community interviewees positive; 2 remain active this project <b>CC2:</b> 4 of 6 community interviewees; 2 hesitant
Perception that participation irrelevant	4 of 7 EC1 interviewees; 0 EC2 interviewees	3 of 5 CC1 and 3 of 6 CC2 participants
<b>Decision Satisfaction</b> Self-reported satisfaction	1 EC1 survey respondent; 1 EC2 survey respondent and 1 EC2 interviewee	No reports of satisfaction with the decision
Expressed willingness to appeal/protest	2 EC1 interviewees raised possibility of further appeal	None
Actual appeals/protests	Administrative appeal filed in EC1	No appeals filed
<b>Trust in Government</b> Expressed levels of trust in government	See Table 6-1 for survey results	
Pre- and post-participation community engagement	Interviewee and survey respondents reported comparable levels of participation across all cases.	

Source: Interview/Document references and survey data.

processes, with only two CC1 and two EC1 respondents indicating that they were less likely to do so.

Comparison case participants were more likely to characterize their involvement as irrelevant to the final outcome with six of eleven comparison case interviewees expressing this sentiment compared to only four of eleven environmental justice group interviewees, all of which were in EC1. This sense of futility may reflect the lack of power within the community or the unwillingness of the applicant to move from its established position. For example, interviewees stated that applicants “only listen to power and money” (CC114), that “the poorer areas, the neglected areas” aren’t listened to” (CC217) or that, “to get the permit or do what they want to do, they have to put up with so many meetings and so much talk from the community... I think they sit down, they suck it up, they take it and then they do what they want to do” (EC112).

Almost no participants in any case expressed satisfaction with the final decision. Specifically, one survey respondent in EC1 and one survey respondent and one interviewee in EC2 reported being satisfied with the results. Although survey results indicate stronger dissatisfaction in the comparison cases (average score of 1.18 in comparison cases compared to 1.67 in environmental justice cases) (see Table 6-2), the only appeal in any of the cases studied was filed in an environmental justice case (EC1). Since appeals are costly and complicated, however, this may indicate greater resources or familiarity with the process rather than greater community dissatisfaction with the decision. This appeal was pursued through the full administrative process and a final decision granting the permit was issued in the spring of 2012.<sup>32</sup> To date, no court challenge has been filed.

Finally, trust in government measures did not show significant differences between environmental justice and comparison cases. No respondent reported significant changes in

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<sup>32</sup> The final decision, which was issued by the DEC Commissioner in the spring of 2012, held that challenges to the analyses in the Environmental Impact Statement were not properly raised in an administrative appeal of DEC’s permitting decision, since the SEQRA analysis was reviewed and approved under a separate process. The Commissioner dismissed the remaining challenges to permit conditions as failing to raise substantial or significant issues.

community engagement and the survey scores for trust in government were almost identical across the environmental justice (1.86) and comparison cases (1.83) with some variation between EC1 (1.74) and EC2 (2.16) (see Table 6-2). Interestingly, trust scores were lower for participants as a group (1.68) than non-participants (2.0) (see Table 6-2). The same trend was present within the environmental justice cases (1.75 compared to 1.97) and comparison cases (1.61 compared to 2.03) (see Table 6-2). Because the survey was administered post-process, it is unclear whether participation diminished trust or whether diminished trust increases participation. However, in explaining why they did not participate, no respondents selected the option: “I trusted the agency to do the right thing without my participation,” suggesting that non-participants are not more trusting of government than participants and that the enhanced public participation norms are at least marginally effective in increasing perceived legitimacy of the regulatory agency.

Based on this data, application of the enhanced public participation policy was marginally and inconsistently tied to increased legitimacy measures. Thus, I hypothesize that application of the EJ policy in its current form will have no consistent effect on the legitimacy of the process, the decision or the agency.

### **III. Discussion of Results**

As Gaventa (2004) notes, a meaningful public role in decision-making requires both enhanced voice and enhanced receptivity to voice. The EJ policy attempts to improve the “pre-conditions for voice” (Gaventa, 2004) through structural changes to the timing and methods of notice, outreach and informational support. These changes are intended to increase project awareness, provide time to organize, and ease entry into the public process. In addition, by requiring the applicant to engage directly with the community, the EJ policy addresses one structural condition for receptivity – namely that public voices are heard. Within my case studies,

these structural changes had a positive effect on access and, to a lesser extent, social recognition and conditionally positive effects on voice, dialogue and institutional recognition. Factors such as applicant attitude, community strength and the specific design of public outreach appear to be critical to both enhanced voice and enhanced receptivity to voice. In addition, the benefits of enhanced participation did not always reach the most disenfranchised communities within the targeted geographic areas.

**A. Applicant Attitude, Voice and Receptivity to Voice**

Structurally, the EJ policy is intended to ensure that the affected community is involved in the review of a proposed project early enough that project changes and additional review are still possible. In addition, by encouraging dialogue between the applicant and the community, the EJ policy moves these negotiations out from under a regulatory structure that agencies often view as inflexible. As one agency staffer explained during a public hearing, “there’s a limit to what we [can] do....[I]t has to be for a regulatory reason” (CC1D25). The applicant has greater flexibility on the scope of permit-related discussions, allowing the community to raise the full range of social, economic, and public health issues encompassed under the term environmental justice. However, because such negotiations do not have the force of regulatory requirements behind them, successful efforts depend on the willingness of the applicant to engage.

The role of applicant attitude is highlighted by the most successful of the case studies. The EC2 applicant showed greater flexibility in designing and implementing its public participation plan, provided more engaged explanations of and direct answers to community concerns, and was more willing to consider and adopt changes in the review process and in the final project itself. As one representative explained, this applicant approached the permitting process as “an interaction and an iterative process to come up with what makes business sense to

us and makes environmental sense to the community” (EC2IA4). In contrast, the EC1 applicant failed to adapt its public participation process despite recognized shortcomings in the EJ meeting and noted that changes in project design would have been difficult “because we were already...somewhere between 50 and 90 permit designed” (EC1IA1). This difference in attitude may be explained by a more open or collaborative organizational culture. However, it may also be due to the relative strength of the affected communities and a calculated judgment on the part of the applicant as to the cost of not engaging.

The EJ policy may help empower communities through early notice and more direct access to project information. Although each of the cases study included organizations or activists that could have engaged in the process, involvement was deeper, broader or more strategic in the environmental justice cases. In EC1, a community coalition was able to mobilize hundreds of community residents to submit comment letters and appear at hearings and to develop strategic talking points that were repeated by multiple participants. In EC2, a community group was able to help shape the outreach process to ensure that its constituents were engaged and to access necessary technical assistance to ensure deeper participation. In the comparison cases, community participation was more scattered and less technical. In CC2, organizing efforts focused on professionalized community and environmental groups and elected officials. Every written comment came from such groups and the substantive issues raised in these comments were not reflected in the testimony of unaffiliated residents who appeared at the public hearing. In CC1, the effect was less pronounced, because a local review process provided early notice and some residents had been continually engaged in a struggle against the solid waste facility at issue for years. However, despite this lead time, the community never coalesced into a formal group or developed a shared strategic approach to the proposed expansion.

Community empowerment alone may not be enough to alter the applicant's calculated cost of not engaging, however. Rather, the structure and scope of community organizations and community goals, which varied significantly between the environmental justice cases, may be important to this calculation. Within EC1, the community was represented by individual residents and a loose coalition of elected officials, community activists, and community and environmental organizations. Although this group was able to develop strategic talking points, conduct its own technical investigations, and file an administrative appeal, no single group or person emerged as the dominant voice. In addition, the goal of this group appeared to be relocating the proposed solid waste facility. In contrast, within the EC2 community, a single long-established community group emerged as the lead community voice in negotiations with the applicant and was able to influence outreach, the form of dialogue opportunities, the investigations conducted, and the final shape of the project. Although some community residents felt dissatisfied or unrepresented, this group was able to parlay its long history of activism and deep relationships with other community groups into an early invitation to participate and a strong negotiating position. Further, this group was focused on improving, not shuttering, the facility under review. Thus, the organization structure of community stakeholders and community goals may be important to encouraging the applicant to engage or to ensuring that the community is able to engage effectively.

#### **B. Maximizing Participation through Tone and Source of Notice**

Despite the significant improvement in outreach by applicants within the environmental justice cases, the notice methods typically used in these cases do not appear to drive participant turn-out or engagement by diverse communities in these cases. Direct mailed notice from the applicant or agency was most successful in generating engagement, as 6 of 7 participants that got

such notice reported participating. However, only 10% of all participants were drawn into the process in this way, probably due to the high cost and limited scope of such efforts. Levels of participation generated by other applicant-generated notice, such as flyers, posters or news articles, are more difficult to measure, since participants did not distinguish between applicant-generated and community-generated materials or characterized notice from targeted but impersonal efforts as “accidental.” However, the data suggests that turn-out was highly dependent on this community-based outreach.

Personal contact was particularly important to generating participation. The director of an established community organization explained that, “to get people to turn out, you have to make phone calls” (EC2I3). In fact, almost 50% of survey respondents that participated in the permitting process (15 of 26) were contacted by a community or environmental organization and 29% by neighbors. Only 12% of non-participants reported that they were contacted by a community or environmental organization and 19% reported being told about the process by neighbors. The number of interviewees and other participants who reported being drawn into the process by neighbors or local organizations was much smaller – only 15% in environmental justice cases and 17% in comparison cases. However, this may be because many of the interviewees were themselves community organizers who were more involved in monitoring environmental issues in their communities.

One obvious explanation for this result is that community residents are more apt to respond to trusted community organizations or direct invitations. As one agency staffer noted, “there always has to be someone in the community that takes the lead [to] have more public participation” (CC1IA6). However, the data in this study suggests that another important

difference may be the tone and focus of outreach from neighbors or community organizations compared to outreach from the applicant or agency.

For the most part, the notices issued by the applicant or the agency had a reassuring and positive tone, describing proposed facilities as “state of the art” (EC1 News article) or focused on “environmental improvements” (EC2 Press Release). Applicant notices focused on the benefits of the project – for example, that waste at the EC1 facility would be placed in “sealed shipping containers” within a “fully enclosed” facility (EC1 Notice of Complete Application). A public meeting notice issued by the applicant in EC2 reads almost like a sales brochure:

Architectural design methods to reduce visual impact! Green design attributes being incorporated into the facility! Emission reduction strategies that generate reduced emissions! (EC2 Community Meeting Notice.)

Public hearings were described as opportunities to ask questions, get additional information, or “engage in dialogue” (EC1 Public Meeting Flyer, EC2 Community Meeting Notice). Formal notices from applicants or agency staff used neutral, standardized language to explain the modification requests, how to get additional information, and how to make comments. One community member described such notices as “just very generic. You know, the proposed facility would accept deliveries and this is what we would do” (EC111).

Flyers and meeting notices distributed by community groups, particularly activist groups, focused on the potential environmental problems and repeatedly used words like “urgent,” “vital,” and “important” in discussing the need for public action. These flyers were positional and urged recipients to take action on the stated position. The stated goal was to generate participation in opposition to the facility, not simply to ensure that all questions are answered or voices heard. For example, a community flyer related to the EC1 facility for example, contained the following message (identifying details removed, format preserved):

## **URGENT COMMUNITY MEETING**

INCREASED LEVELS OF MERCURY AND LEAD FOUND IN THE SURFACE SEDIMENT OF [ ] BAY, AT THE SITE OF THE PROPOSED WASTE TRANSFER STATION. [ORGANIZERS] ARE HOLDING AN IMPORTANT COMMUNITY MEETING TO UNVEIL A RECENT STUDY THEY COMMISSIONED THAT CONTAINED ALARMING RESULTS FOR OUR COMMUNITY.

***IT IS VITAL FOR YOU TO ATTEND THIS URGENT MEETING***

(Antiwaste Task Force Meeting Notice, EC1D68.)

Community-directed outreach also had more detail about potential impacts. As the director of a key community group in EC2 noted, “[a] lot of [public] meetings really take advantage of the fact that communities come in cold without hearing the information for the first time. So...part of our [group’s] role in outreach is to provide the community with the tools [to] process the information when they hear it[,] ask strong questions [and] participate in a way that’s meaningful.” Flyers in EC1 described the history of the site (“The incinerator operated for 33 years without the proper permits. It strewn [sic] dioxins throughout the air causing cancers and asthma and other respiratory diseases” (Community Flyer, EC1D4)), raised concerns about applicant responsiveness (“How many Community Boards are going to feed into this site? Can’t get a straight answer.” (Community Flyer, EC1D5)), and called for specific action (“Call your elected officials. Tell them your concerns.” (Community Flyer, EC1D5); “Please call [applicant] to be placed on mailing list to be notified about...upcoming meetings” (Community News Flyer, EC1D7)). These more positional notices circulated by the activist groups appear much more effective in generating turnout than applicant or agency notices. The reasons given by participants for their involvement also support this inference.

Only four of twenty-two participant survey respondents and two of twenty-two

community interviewees gave neutral reasons, such as learning about the project or understanding its pros and cons, for participating in the permit review processes. The remaining participants became involved because of their opposition to the proposed facility or specific concerns about its environmental and community impacts. For example, survey respondents stated that they became involved because they believed that the projects under review were “a health hazard as proven by its predecessor,” “a terrible health issue” or “a major detractor to quality of life in the surrounding area.” Interviewees provided similar reasons for their involvement. These reasons for participation resonate more with the tone and focus of community notice.

In addition, targeted and personal outreach appeared crucial to fostering participation by defined minority groups. As discussed above, many of the participants who characterized the permitting process as representative of the community ascribed that success to their own organizing efforts. For example, an EC1 interviewee noted that a small portion of the community’s large immigrant population became “engaged...with urging from us” (EC1I3), while a CC2 interviewee described the community’s extensive leafletting efforts that “[got] people definitely from the [housing] projects” near the facility (CC2I7). As the director of the lead community group in EC2 noted, even when “everybody distributes the notice to their base...[so] everyone has access to the information[.]. . .to get people to turn out, you have to make phone calls” (EC2I3).

Thus, the extensive outreach efforts by applicants within the environmental justice cases may have been only indirectly responsible for the higher turn-out. Rather than motivating involvement directly, this early outreach may simply have succeeded in alerting trusted

community organizations, which used more detailed, personal, and positional outreach to draw participants to the public review process.

### **C. Reaching the Environmental Justice Goals of the Policy**

Successful implementation of the EJ policy alone, even in the presence of an appropriately structured community organization, may not be enough to draw the most disempowered populations into the process. If the EJ policy is intended to correct historic imbalances in access to and voice within permitting processes, the affected community must be defined more specifically than simple geographic proximity to a demographically underrepresented community.

As the director of the established community group in EC2 noted, the community meetings required under the EJ policy cannot be called “environmental justice meetings because they have to reach out to everyone, to all the stakeholders in the community [rather than] the most vulnerable communities” (EC2I3). Undifferentiated outreach may result in meetings where, as this interviewee noted, “the most privileged people are...the ones who speak the most, who feel entitled to speak on behalf of everyone” and, as a result, “the voice of people most impacted is silenced” (EC2I3). Fung (2004) noted that the more privileged participants in community meetings tend to set the agenda and dominate conversation without the guidance of a motivated facilitator and explicit deliberative norms. For the EC2 community, the most disenfranchised communities were given voice in the process by varying meetings site, size, and structures and through the outreach and educational efforts of a dedicated community organization (EC2I3)

Given that institutional recognition is a key marker of environmental justice, improvements in this criterion are particularly important in gauging the success of the EJ policy in meeting its goals. Two of the non-routine changes made in EC2 are crucial in terms of

institutional recognition and empowerment of the environmental justice community: funding an expert to advise a coalition of community groups and negotiating a binding agreement with this coalition guaranteeing promised emission reductions at a related facility.

Access to technical assistance can be the key to a strong negotiating position and meaningful participation in a permitting process. Navigating technical information is difficult for all communities (Fischer, 2000). This was a frequent complaint within all cases studied. As one CC1 interviewee explained:

You're not an engineer. You're not a scientist. You're not an environmental expert. You have to learn each of these areas before you can make an intelligent comment. And if you don't, you have to go out and hire someone who understands what the hell they're reading. (EC1I3.)

However, residents of non-environmental justice communities may be better able to find the expert assistance needed within their personal contacts or among their members. This held true within the comparison community. For example, one CC1 interviewee noted that, when she had questions about the regulations governing solid waste facilities, she went to a “friend who...knows [because h]e owned a facility himself” (CC1I2) and CC2 residents were able to find the equipment for independent air monitoring through an acquaintance (CC2I2). In addition, CC2 activists were able to rely on internal technical experts, including a chemical engineer who could “pull[] out...very interesting questions about” the chemicals used in the process (CC2I7) and an employee of “environmental pollution detection company [who] knew something about particular pollution” (CC2I8).

Communities of color are often adept at “code switching” or expressing their concerns in mainstream communication styles. However where these communities do not themselves contain “experts” or have personal ties to experts and are unused to communicating with experts, they may have particular difficulty in translating community concerns into technical terms that fit into

categories of inquiry valued by professionals (Corburn, 2005). This disparity in access to technical assistance or internal competence constitutes the type of structural inequality that must be acknowledged and addressed to provide full institutional recognition. The EC2 applicant was unique in recognizing this inequality and taking steps to correct it in terms of both external and internal structural change. By funding a technical advisor to the lead community coalition, the EC2 applicant created an external structural change that allowed the coalition to engage on a more equal footing and to support beneficial changes in process and project design in the technical language of the existing review process.

The second critical change made by the EC2 applicant reflects both internally and externally focused structural change. To win community support, the EC2 applicant promised a reduction in overall emissions within the affected area through emission reductions at a related facility not covered by the EC2 permit. When efforts to create a rider to the EC2 permit failed, the applicant worked with a coalition of community organizations to explore other options, resulting in the negotiation of the binding agreement mentioned. By engaging community members as partners in designing and implementing a solution to this problem, the EC2 applicant recognized community members as empowered “‘makers and shapers’ rather than ‘users and choosers’” of interventions or services designed by others” (Gaventa, 2004). This change also suggests a re-imagining of the typical applicant’s role – rather than simply an advocate for its project, the applicant became a collaborative partner in designing a solution acceptable to all parties.

Thus, the EJ policy may require some modification to ensure that it creates effective participation opportunities for the most disenfranchised groups within geographically defined environmental justice communities. These modifications may center on promoting alternative

meetings to reach specific sub-populations within a community or meeting structured to be more conscious of and committed to full participation and meaningful deliberation. In addition, changes may be needed to ensure access to technical assistance.

#### **IV. Conclusion**

One of the central goals of the Environmental Justice movement is meaningful participation in and fair environmental justice within environmental decision-making. New York's Environmental Justice Policy is intended to address historic imbalances in access to and voice within environmental permitting decisions that affect predominantly minority. The EJ policy tries to ensure more effective public participation by enhancing community voice through early participation opportunities, more extensive and tailored notice and outreach and better access to project-related information. In addition, the EJ policy restructures the process to enhance receptivity to voice by putting the applicant and the community in direct contact. Based on this research, I propose that this policy is successful in enhancing access and, to a lesser degree, social recognition and that the policy may conditionally improve voice, a limited form of dialogue and institutional recognition. However, these latter gains are likely to be conditional on external factors, such as the organizational culture of the applicant and the strength and structure of the community organizations involved in the process.

By isolating the specific elements of effective participation that are enhanced by the application of New York's EJ policy, this research helps to identify the mechanisms that actually create benefits. Specifically, given that the greatest improvement was seen in access to the process, this research highlights the importance of targeted and more extensive notice and outreach and better access to project-related information. However, these findings also point to a

significant flaw in the EJ policy. Namely, the policy does not mandate the tailored and mindful outreach necessary to ensure that the most disenfranchised members of a geographically defined “environmental justice community” are able to find voice within the structures provided. The efforts made by the EC2 applicant may provide important guidelines for the changes required to ensure that the EJ policy actually reaches the population it is meant to benefit. These measures also appear particularly important to ensuring institutional recognition, which is the effectiveness criterion most tightly tied to environmental justice.

Finally, this research highlights the limited role that the environmental regulatory agency itself plays in providing effective public participation. Within the environmental justice cases, most of the process and project changes responsive to community concerns were made by the applicant, not the agency. Agency staff appeared to see little room for movement to address community concerns. This lack of engagement may be responsible for the limited improvements seen in the measures of legitimacy. In the next chapter, I briefly explore the legal landscape and propose some areas in which agencies can make changes that may increase community satisfaction and perceived legitimacy of the process and the decision without exceeding legal authority.

## **Chapter 7: Applying Lessons Learned and Existing Law to Improve Performance**

New York's Environmental Justice Policy has had mixed success in improving the effectiveness of public participation in the permitting process. The EJ policy, which is designed to promote dialogue between the permit applicant and members of affected environmental justice communities, increases access to the process and social recognition between the community and the applicant and provides the opportunity to improve voice, dialogue, and institutional recognition. However, this opportunity was only fully realized in an environmental justice case (EC2) involving a permit applicant willing to engage with the community and open to changes in the project or process and an empowered community and was open to this discussion. Overall, even the successful application of the EJ policy had minimal impact on the diversity of participants or the perceived legitimacy of the regulatory process, the decision, or the government decision-maker.

In this chapter, I explore the lessons learned about effective implementation of the EJ policy, the presumed obstacles to agency action to enhance effective public participation, and the potential for agencies to overcome those obstacles under existing law. Regulatory agencies cannot directly dictate applicant attitude or community empowerment, both of which may be important to effectively addressing environmental justice concerns through public participation norms and related processes. However, agencies can encourage applicants to adopt some best practices that emerge from the data. The greater opportunity for change is through internal agency action. Relying on authority already accorded under federal and state law and policy, agency staff can act to enhance three measures of effective public participation: voice, institutional recognition, and the legitimacy of the final decision and the decision-maker. To do

so, the agency will have to commit to the underlying goals of environmental justice, as well as the letter of the EJ policy.

### **I. Improving the Effectiveness of Public Participation Through Policy Enforcement: Lessons Learned from the Cases**

Although the applicants in both environmental justice cases complied with the Environmental Justice policy, the effectiveness of public participation varied dramatically between the two projects. In essence, the EC1 applicant developed an Enhanced Public Participation Plan that met the EJ policy requirements, while the EC2 applicant worked to develop an Enhanced Public Participation Plan that met the underlying goals of the policy. As a result, although both projects saw increases in objective measures of access and social recognition by the applicant, and one measure – the number of participants – favored the EC1 project, only EC2 saw significant gains in voice, dialogue, or institutional recognition.

Numerically defined markers of success or more specific requirements regarding the method or extent of outreach are unlikely to bridge this difference. Rather, the difference lies in applicant attitude toward and commitment to the underlying goals of the policy. As Luke Cole (1999), a pioneer in environmental justice law, noted, “mechanisms designed to give power to the local level only operate if decision-makers and the participating public have a commitment to the process.” An inflexible approach to the EJ policy focused on meeting pre-defined numeric or narrative criteria is unlikely to be successful, since the needs of communities differ. Fully embracing the EJ policy and its underlying community empowerment goals requires the internalized change envisioned in theories of institutional recognition. This complicates meaningful compliance and may require particularly strong institutional norms favoring openness, responsiveness, and meaningful participation or external motivators such as already

empowered communities (Carlson, 2003). Where necessary changes do not arise organically, however, they may be prompted by agency nudging. The cases studied provide important lessons about developing an effective public participation strategy and highlight some best practices that environmental agencies in New York and elsewhere can recommend to applicants or implement on their own.

First, agency staff should encourage reliance on local organizations to conduct some or all the outreach for environmental justice meetings. As noted in Chapter 6, many participants in both environmental justice and control cases learned about the project and the opportunities for public comment from neighbors or local organizations rather than notice generated by the applicant or agency. Approximately 50% of the survey respondents (15 of 26) and at least 15% of interviewees were drawn into the process by local contacts. Local organizations are likely to be more trusted by community members and the public may be more used to responding to requests for participation from such groups. Community organizations are also more apt to have the personal ties or to make the personal contact required to draw new participants into the process. They may also better understand how to do effective outreach in a particular community. For example, in some communities, effective outreach may focus on religious institutions (EC1I6) or require a personal contact (EC2I3) or direct outreach to specific segments of the community (CC2I7).

Community organizations also have the freedom to frame outreach in ways that resonate with the community. Although community-generated outreach materials from the cases studied tended to be more positional, they also provided more context for the proposed project and information about potential impacts. Given that lack of information about the project and its potential effects was one of the most common reasons given for non-participation, detailed

notices tailored to issues likely to be of community concern and drafted in language that will resonate with and be understood by the affected community may be more likely to generate participation than the more neutral or positive notices that tend to be generated by applicants.

Second, agency staff should encourage applicants to provide more than one environmental justice meeting and to consider a range of participation formats, such as small group meetings, seminars, poster sessions, or a series of presentations to existing community groups. Although large public meetings may be easier to plan and implement, generating meaningful dialogue in such venues is difficult at best. Large public meetings can easily devolve into a forum for community members to vent their frustrations. The EC1 applicant, for example, stated that “[w]e tried to do the back and forth, but I can’t say that it was terribly successful.... [A] lot of it was people not just venting, but...[complaining] about the way...[the applicant] operates” (EC1IA1). These meetings may also be used as a way to rally opposition to the proposed facility rather than a space for meaningful discussion. One community interviewee praised public meetings as “a way for activists to get together and talk about what [to] do next” (CC2I8), while another described them as “a way to organize” (EC1I8). In the most successful environmental justice case (EC2), the applicant provided smaller meetings, a range of formats, and multiple venues for participation and generated significantly more satisfaction in terms of community voice and dialogue.

Finally, the agency should encourage applicants to communicate with the public often, to respond directly to the suggestions made or concerns raised, and to specifically explain the reasons behind that response. As evidenced by the interview data, community members within the environmental justice cases were most frustrated by truncated responses, canned answers or simple references to prior evaluations without adjustments or additions to reflect the new or

revised questions raised. The EC2 applicant provided more detailed responses and, even though many of the responses rejected community suggestions, overall rates of satisfaction were higher. Such direct and tailored responses also invite a more nuanced community rejoinder, rather than simple repetition of positional rhetoric.

## **II. Improving Effectiveness of Public Participation through Agency Action**

Although the EJ Policy is not directed primarily at agency staff, its passage indicates a formal commitment by the New York DEC to public participation, particularly in response to environmental justice concerns. This commitment has, to varying degrees, filtered down to line staff. However, although agency staff recognize the importance of the commitment, many staffers appear to take a limited view of their ability to act on it.

Agency staff frequently noted the importance of effective public participation in interviews. Administrator B described the importance of full representation in public decisions and the need to address historic gaps in representation tied to race and class. Administrator A noted that “the whole intent of [public] outreach and...conversation is to give weight to the community voice,” while Administrator F simply stated that “we’re a public agency and we have to be responsive to the public.” The New Jersey DEP has similarly committed to providing early communication and full information to communities that are designated as overburdened with environmental hazards and to facilitate public input into permitting decisions affecting these areas (CC1IA5). In fact, most state environmental justice regulations or policies have focused on improving public access to or voice within public participation processes (Bonorris *et al.*, 2010).

Unfortunately, agency staff often define the role of participation in limited ways. The goal may be viewed as simply injecting information into the decision-making process, as Administrator E suggested when he said “[t]he public saying, hey, you’re missing something

here...changed the whole scope of the project.” Alternatively, public participation may be seen as a way to provide project information to the public, particularly with respect to the agency’s analysis of the project and rationale for its preliminary permitting decision. As Administrator D explained, “we can’t always convince people that we made the right decision, but if we can convey how we made that decision and the reasons behind it, I think it goes a long way with the public.” Agency staff described public participation as a way to get information out to the public far more often than the reverse. Further, within the cases studied, there was little evidence that agency staff treated public participation as a dialogue or an opportunity to engage with the community about their concerns. Instead, agency staff followed standard procedures with minimal deviations and spent little time publicizing the efforts that were made to investigate and respond to public concerns. Unsurprisingly, survey results suggest that participants in the environmental justice cases were no more likely than those in comparison cases to report trust in the regulatory agency or to view the agency, the decision-making process, or the decision as more legitimate. In fact, participation in environmental justice cases was tied to lower reported trust in the agency,<sup>33</sup> although the causal direction of this relationship is uncertain.

This gap between agency commitment to and creation of more effective public participation may be due to staff perceptions that they are unable to implement meaningful change in permit terms without a direct statutory or regulatory mandate. Many staffers noted that where an applicant meets the statutory and regulatory requirements for the requested permit, they cannot simply reject or unduly constrain the application. For example, at a public hearing in CC1, an agency staff member explained that “[i]f you're looking for...the permit [to] be denied

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<sup>33</sup> The full results of legitimacy and trust related survey measures are reported in Chapter 6, Sec. II.F. When the responses to survey questions were averaged by category (participant/non-participant and environmental justice/comparison), participants were consistently and significantly less trusting than non-participants, although the gap was larger for the comparison cases than the environmental justice cases. Specifically, the average “trust in government” score for comparison case participants was 1.62 compared to 2.03 for comparison case non-participants, while the average score for environmental justice case participants was 1.75 compared to 1.97 for environmental justice non-participants.

and the facility closed down...we would need a regulatory basis” (CC1D25) and, in its written response to comments in CC2, the agency stated that “[s]ince there is no exceedance of the ambient air quality standards, the NYSDEC cannot restrict [facility operations as requested by the public]” (CC2D32). Given this perceived lack of flexibility, agency staff may feel uncomfortable discussing concerns that are not directly on point with regulatory standards.

Lazarus and Tai (1999) note the widespread perceptions within environmental regulatory agencies that they have limited ability to incorporate environmental justice concerns into permits. However, agencies can enhance the effectiveness of public participation through changes in their approach to the process without overstepping legal authority. Specifically, regulatory agencies have sufficient discretion in terms of monitoring and enforcement, agency transparency, and site-specific investigation and regulation to ensure more effective public participation, particularly in terms of voice and institutional recognition, and to increase the perceived legitimacy of the agency, the decision-making process, and the final decision. Agencies can take advantage of that flexibility by adjusting their internal image of their role in both permitting and enforcement.

#### **A. Enhanced Enforcement**

Regulatory agencies typically have broad discretion in enforcement. New York’s EJ policy urges the DEC to take advantage of that discretion to target low-income communities and communities of color, particularly those that have previously been neglected. Such efforts may be particularly important in light of community skepticism about applicant compliance with and agency supervision of the application being issued.

Enforcement was a key concern of three of the four communities studied. In both EC1 and CC1, community members frequently complained about past violations and lax enforcement

in their communities, particularly with respect to the specific facilities or applicants seeking the permits under review. As one CC1 resident noted,

there were complaints and complaints and complaints....Different problems. And then he circumvented the law a lot....[W]e knew all along he was doing extra.... [I]f he was allowed to do 90 tons, he was doing 300....[I]f he got up to 500 [in the permit modification], he might be up to 1,000 now. Because he was always doing more than he should have anyway. And I don't think he ever was fined by anybody.” (CC1I1.)

Another CC1 activist complained that the applicant regularly allowed trash trucks and trailers to queue on public streets and to park overnight at another of applicant's properties, but the regulatory agencies did not respond quickly enough to document the violations (CC1I2). A third activist, who had been involved in local government, stressed that the city had actually sued the state environmental agency to compel enforcement against the applicant (CC1I3).

Similarly, the long-term violations at an incinerator previously operated by the applicant at the proposed EC1 project site sparked numerous complaints. For example, one interviewee noted that “the incinerator...operated illegally for 30 years...under the aegis of the DEC and they never shut them down. Despite the fact that they knew full well that they didn't have the right permits and they were polluting” (EC1I3). Another explained that “I got interested in this because we had an illegal incinerator at that spot for 33 years.... And the government knew and no one did anything about it” (EC1I6). A third stated “believe it or not, before this one, they had an illegal incinerator here...and [t]hey had a lawsuit and they closed that one. But now [the applicant] wants to build another one. And, of course, the ones with the money get their way” (EC1I7). In fact, ‘incinerator’ was one of the most frequently used words within project-related documents and interviews in EC1, with the term raised almost 500 times.<sup>34</sup>

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<sup>34</sup> Specifically, the term ‘incinerator’ was used 481 times within project documents and interviews. The only impact-specific terms used more frequently were ‘traffic’ (raised 849 times) and ‘dredging’ (raised 693 times). This focus is particularly compelling since the project under review did not include an incinerator component.

In EC2, the primary concern was not past violations but the future enforceability of promised emission reductions. As one activist noted, “we wanted to make sure that the agreement to reduce emissions would run with the land [and] survive a change in ownership” (EC2I3). Other participants raised concerns that the proposed “voluntary” reductions at a related facility or expected reductions at the permitted facility be directly enforceable (EC2 E-mail to DEC, EC2 Letter to DEC, EC2I2). Records of public meetings show that several participants pushed for greater community access to monitoring data (EC2 Progress Report No. 3, EC2 E-Mail Response to DEIS Comments, EC2 Response to Public Comments, EC2I3), possibly as a result of limited trust in the regulatory agency. The director of an established community organization captured this feeling when she noted that “to be honest, DEC has really not looked out for the community” (EC2I3). Only participants in CC2 did not mention specific concerns with enforcement or potential future violations. Instead, their comments were directed toward the inadequacy of prior permit terms to protect public health and prevent community disruption.

Typically, the “decision to initiate a civil or criminal enforcement action is...a matter of agency discretion to exercise as the [head of the agency] deems ‘appropriate’” (Lazarus and Tai, 1999, p. 636). New York courts have specifically held that enforcement is a discretionary act which turns on judgments regarding allocation of resources, degree of harm and other relevant circumstances (*Agoglia v. Benepe*, 2011; *Sprachman v. New York State DEC*, 2000). Targeting environmental justice communities may be “especially ‘appropriate’ where “[t]here is reason to believe that historically federal and state enforcement of environmental protection laws did not occur at a level commensurate with the environmental risks prevalent in [these] communities” (Lazarus and Tai, 1999, pp. 636-37), where environmental hazards are unusually concentrated, or where the community has known vulnerabilities to environmental risks. New York’s EJ policy

itself recognizes the value of targeted monitoring, requiring the DEC to “begin conducting supplemental compliance and enforcement inspections of regulated facilities” in these areas within three months after implementing the policy (CP-29, III.B.10).

Although these supplemental inspections are meant to target facilities which “there is reason to believe...are not operating in compliance” with the law (CP-29, III. B.10), the directive underlines agency discretion to focus inspection and enforcement efforts based on historic and current community vulnerability rather than facility-specific factors, such as facility size, significance of potential violations, or date of last inspection. At minimum, agencies should be able to consider facility-specific factors frequently raised by members of the affected community, such as an applicant’s historic non-compliance with environmental laws or continuing community complaints.

Where violations are found, decisions regarding enforcement actions should similarly consider community characteristics to determine an appropriate penalty (Lazarus and Tai, 1999). Tailoring enforcement decisions to community conditions may help to counter community perceptions that their complaints are not valued or that the agency is not looking out for their interests. As one EC1 activist noted, “as to the DEC looking to protect us, they simply gave the incinerator another extension. They gave them a Consent Order that said, okay, so fix 1, 2 and 3 and we’ll come back to you in a year. They come back in a year and 1, 2 and 3 are not fixed. So they say, okay, fix 1, 2, and 3. We’ll give you another year. And that’s what they kept doing” (EC1I3). Violators in overburdened communities might be given less leeway to correct problems without penalty or be required to come into compliance more quickly.

By expanding inspection and enforcement efforts in heavily burdened or historically under-protected communities, regulatory agencies may both improve public health and

environmental conditions in these areas and increase public faith in the agency. Where community members express concerns about future compliance during the permitting process, agencies could enhance community voice and their own legitimacy by committing to supplemental inspections or, at least, offering that possibility if there are on-going community complaints. The agency could further enhance perceived voice by providing a simple method for lodging complaints or concerns about facility operations. Finally, if done in connection with enhanced agency transparency, as discussed in the subsequent section, the agency may be better able to persuade the community that the permit as drafted was technically sound and protective of public health and the environment.

## **B. Increased Agency Transparency**

As public agencies, both the New York DEC and the New Jersey DEP are required to make most permitting and enforcement records public. For example, permit applications, draft permits and related reports are typically made available as part of the permitting process. When the final permit is issued, agencies must prepare and make public a record of its final decision, which typically includes a summary of public comments and the agency response to each. Once a permit is issued and the facility is operating, monitoring and enforcement records are available under state Freedom of Information laws. However, many of the participants interviewed for this study were unaware of final decisions, agency efforts to address community concerns, or additional studies conducted during the permitting process. State environmental agencies could ensure that community participants fully understood their own influence and could potentially enhance the legitimacy of the decision and the decision-making process by increasing the transparency of agency actions.

Within the environmental justice cases, applicants made significant efforts to expand notice and outreach. Unfortunately, that effort does not appear to have been matched by the regulatory agency. Although the records in each case included detailed responses to comments from both the applicant and the agency, interviewees asked directly about these documents reported that they did not receive copies or were unaware that such documents existed (EC2I5, EC2I1, EC1I3). In EC1, only two of seven community interviewees, most of whom had been deeply involved in the public process, reported receiving notice of the final permit decision or the agency's response to comments and several participants reported that they did not know the current status of the proposed permit or how to find its current status. Agency staff could improve the effectiveness of public participation by better publicizing the final decision document and responsiveness summary and ensuring that copies are sent directly to participants, posted at the local library, or made available on-line. As one interviewee noted, "[t]ransparency as to the results [would be helpful]. Maybe have a website and give a link to see where they are in the process or what the progress was" (EC1I5).

In addition, the decision-making process itself could be made more transparent. Even where the agency or applicant made changes to the project or required additional investigation in response to community concerns, the public was largely unaware of that connection. One activist noted that conditions beneficial to the community were added to the draft permit, but the community continued to feel impotent within the process because "[w]e never learned how and why – at least, I never heard – how and why the additional conditions were added" (EC1I4). Another did not understand the state's role in the review process, asking "What role was the state?" and noting that "I think the state was observing. I didn't really feel that the state was

doing any investigation...[or] presenting any information. I didn't get any sense of that" (EC2I2).

Agency staff could enhance the potential for dialogue and potentially increase public understanding of their position by sharing more of the analysis that is already being done as permit conditions are reviewed and changes are negotiated with the applicant or mandated by the agency. Where additional investigations were required, the results were not always publicized or even made available to the community. In CC1, for example, the applicant was ordered to conduct a post-permit noise study to demonstrate that its operations were meeting regulatory standards. In part, that decision responded to strong community concerns about noise and traffic. However, the final study was neither publicized nor released to the public; DEP simply reviewed the work internally to ensure that applicable standards were met (CC1IA6). Unsurprisingly, none of the community members interviewed mentioned the additional traffic and noise studies nor did they perceive the agency as responsive to their concerns about these issues.

Other community members were concerned about the limited transparency regarding incidents or on-going violations at the permitted facility. Activists in the CC2 community noted that incidents at the facility under review are downplayed. One interviewee stated "they have [incidents at the facility] in the night, they call a passive incident...where, oh, you're really not seeing what you see.... [T]hey have to inform people" (CC2I7). In EC1, community members frequently complained of a long history of violations in the area that took place without community awareness. Although formal monitoring and compliance reports, notices of violation, and penalty assessments are considered public records available under the New York Freedom of Information Law, (NY CLS Public Officers Law § 87(2)) the process can be lengthy and is not familiar to many members of the public. Agencies could address concerns about access to this

data by publicizing the availability of monitoring results or by simply making them available in local libraries or on-line without the need for a FOIL request.

Regulatory agencies do not need a change in law or policy to initiate any of the steps described above to increase the transparency of their decision-making or compliance monitoring. In fact, in the Commissioner's final decision on the EC1 permit, DEC required the applicant to publicize the availability of a specific report that addressed one of the community's major concerns and to send copies of that report directly to the community groups involved in the permit appeal. Given that DEC believes it has the authority to require such actions from an applicant, the agency itself must have comparable power.

### **C. Community-Specific Investigation and Permit Conditions**

Enforcement decisions and process transparency are areas of acknowledged agency discretion. However, because these changes would not alter the terms of the underlying permit itself, community activists may consider them too superficial to reflect meaningful public voice or legitimize the final decision. Although agency staff typically view themselves as having limited discretion to impose additional permit conditions, where state are acting pursuant to authority delegated under federal environmental law, they may have more flexibility than generally recognized.

Lazarus and Tai (1999) surveyed federal environmental laws to assess how much discretion implementing agencies have to address environmental justice concerns. Based on statutory language and decisions of the Environmental Appeals Board (EAB), which hears administrative challenges to EPA permitting decisions, they concluded that EPA has broad authority to expand public participation opportunities within environmental justice communities and to undertake additional investigation of potential adverse impacts on human health and the

environment from facilities seeking permits within these areas (Lazarus and Tai, 1999). In addition, under certain “catch-all” provisions in federal environmental law, agencies may be able to impose additional operating conditions, particularly related to monitoring and reporting, deemed necessary to protect public health and the environment or to implement key provisions of the underlying laws (Lazarus and Tai, 1999).

### **1. Additional Investigation Requirements**

At minimum, federal and state environmental agencies have the discretion to order additional impact analysis and investigation. For various reasons, low-income and minority populations may be more vulnerable to environmental pollutants. In addition, given the demonstrated clustering of environmental hazards in these communities (Bullard *et al.*, 2007; Lester *et al.*, 2001), overall exposures may be unhealthy, even if the particular facility being evaluated meets permit limits. Where there is reasonable cause to believe that a requested permit may have a disproportionately adverse impact on public health or environmental conditions within specific communities, state agencies should have the authority to order the additional assessments required to respond to such claims.

For federal agencies, this additional analysis may be necessary to comply with Executive Order 12898. This Executive Order requires federal agencies to ensure that their “programs, policies, and activities do not have the effect of excluding persons . . . from participation in, denying persons . . . the benefits of, or subjecting persons . . . to discrimination . . . because of their race, color, or national origin” (E.O. 12898, Sec. 2-2). However, E.O. 12898 does not expand EPA’s legal authority in permitting decisions. Rather, agencies are required to work toward

achieving environmental justice “to the greatest extent practicable and permitted by law” (E.O. 12898, Sec. 1-101) (emphasis added).

The earliest cases to consider the effect of E.O. 12898 underlined that the Order does not change substantive permitting requirements and, where an applicant meets those requirements, the permit must be issued (*In re Chemical Waste Management*, 1994, p. 73; *In re Envotech, L.P.*, 1995, p. 280-81). However, the EAB found that agencies could expand public participation opportunities, because the applicable regulations only defined the minimum level of participation (*In re Chemical Waste Management*, 1995, p. 73; *In re Envotech*, 1995, p. 281). In addition, the EPA could “take a more refined look at...health and environmental impacts” to identify any disproportionately adverse effects on environmental justice communities (*In re Chemical Waste Management*, 1995, p. 75).

In *Chemical Waste Management*, this additional investigative authority was specifically grounded in the omnibus clause of the Resource Conservation and Recovery Act of 1976 (RCRA), which states that “each permit [for treatment or storage of hazardous waste] shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment” (42 U.S.C. § 6925(c)(3)). The EAB held that, to ensure that this standard is met, the EPA had the authority to consider specific impacts on a particularly vulnerable or overburdened community (*In re Chemical Waste Management*, 1995, pp. 74-75). The EAB found similar authority under the Safe Drinking Water Act, although only with respect to impacts on underground drinking water sources (*In re Envotech*, 1995, pp. 281-82 (relying on the SDWA prohibition on any injection wells that “endanger[] drinking water sources,” 42 U.S.C. § 300(h)(a), and the regulatory authority to include any permit conditions “necessary to prevent migration of fluids into underground drinking water sources,” 40 C.F.R.

§ 144.52(a)(9)). Similar authority was found in challenges to Clean Air Act permits (Lazarus and Tai, 1999, pp. 669-676, citing *In re EcoElectrica*, 1997; *In re A.E.S. Puerto Rico*, 1999)) and Clean Water Act permits (*In re Upper Blackstone Water Pollution Abatement District*, 2010) (relying on statutory mandate that the agency set effluent limits at the level necessary to attain or maintain “that water quality...which shall assure protection of public health,” 33 U.S.C. §§ 1311(b)(1)(A), (C)).

In its assessments, EPA has successfully relied on ambient health-based standards, such as National Ambient Air Quality Standards, to support a finding of no disproportionate adverse impact (*In re Knauf Fiber Glass, GMBH (Knauf II)*, 2000, pp. 15-17; *In re Sutter Power Plant*, 1999, p. 692). However, the agency has the authority to go beyond simply determining whether a proposed facility will comply with existing regulations and cannot rely on “mere citation of regulatory compliance without at least a nod to potential EJ concerns” (*In re Shell Gulf of Mexico*, 2010, p. \*71). Where there are substantiated claims that applicable standards will not protect a particular population, agencies must explicitly evaluate the sufficiency of these standards to protect the specific low-income or minority community at risk from the facility.

State agencies like the DEC are not directly subject to E.O. 12898 and are therefore not mandated to consider claims of disproportionate impact or conduct more community-specific analyses. However, where state agencies issue environmental permits as the delegated authority under federal environmental law, they are essentially enforcing the federal law itself and must have the authority to meet all obligations imposed under the law (*see, e.g.* 33 U.S.C. § 1342(b) (allowing delegation of CWA permitting authority to a state if it has “adequate authority...to apply and ensure compliance with” relevant statutory provisions); 42 U.S.C. § 6926(b) (allowing delegation of RCRA hazardous waste management authority to any state that can demonstrate

that its proposed program is equivalent to and consistent with federal programs); 42 U.S.C. § 7661a(b)(5) (allowing delegation of CAA permitting program to any state authority that has “adequate authority...to assure compliance with each applicable standard, regulation or requirement”). Thus, to the extent that federal environmental laws include omnibus provisions as described above, state environmental agencies issuing permits under federally delegated permits, including the DEC, must have the authority to order any additional investigations or assessments required to determine whether a particular facility poses a threat to public health or the environment and, therefore, whether additional protections should be included in the permit.

By exercising their discretion to conduct or order such investigations in response to public concerns about specific health or environmental impacts, DEC staff can enhance community voice. In addition, undertaking this work implicitly recognizes identity-based structural barriers, such as lack of information or expertise, to environmental justice communities being able to demonstrate such adverse impacts on their own or even to frame the issues in a way cognizable by the legal process. Additional investigation or assessment to fill this gap could enhance the effectiveness of public participation in terms of institutional recognition as well.

## **2. Additional Operating Requirements**

In addition to supporting additional investigation or assessment, the omnibus provisions discussed above may allow the implementing agency to impose additional permit conditions as necessary to comply with broad environmental protection goals or with specific statutory requirements. Lazarus and Tai (1999) suggest that these provisions easily support additional monitoring and reporting conditions. In more limited circumstances, they may also support additional operating restrictions on or even outright denial of permits.

Additional monitoring and reporting requirements are easily supportable under current law. Under the Clean Air Act, for example, EPA and state agencies with delegated authority must ensure that permits include “such other conditions as are necessary to assure compliance with applicable requirements of this chapter” (42 U.S.C. § 7661(c)(a)). Lazarus and Tai (1999) argue that the citizen suit provisions of the Act are part of these “applicable requirements” because they “establish the credible enforcement threat needed to promote compliance” (p. 621). Environmental justice communities, however, may not have the resources to monitor facility compliance or to mount a credible threat of enforcement under typical permit conditions (Lazarus and Tai, 1999). Therefore, permits issued for facilities in such communities may have to include additional monitoring or reporting requirements to ensure that an applicable requirement – that is, the credible threat of citizen suits – is guaranteed.

Where communities are unfamiliar with or may have difficulty navigating Freedom of Information laws, the permitting agency may require “more ready access to the information necessary to overseeing the permitted facility’s operation and compliance” (Lazarus and Tai, 1999, p. 638). This could take the form of maintaining a publicly accessible repository for monitoring data and violation reports at the facility, at a local library or on-line. The Clean Water Act, which requires the agency to set “reasonable” reporting requirements, 33 U.S.C. § 1318(a)(4), and CERCLA might support similar community-friendly monitoring and reporting methods (Lazarus and Tai, 1999, citing *In re Chemical Waste Management*, 1995).

New York law also supports additional monitoring and reporting requirements in certain circumstances. For example, New York solid waste regulations require that permits include those conditions necessary to assure that “the permitted activity will pose no significant adverse impact on public health, safety or welfare, the environment or natural resources,” which may

specifically include conditions related to “inspection, . . . sampling, monitoring (including the imposition of on-site environmental monitors), reporting and verification” (6 N.Y.C.R.R. § 360-1.11(a)). Permits for major stationary air emission sources are explicitly required to contain “provisions for detailed monitoring, recordkeeping and reporting” (N.Y. E.C.L. § 19-0311(3)(c)), while permits for minor air emission sources must include “conditions that will ensure that operation of the facility will not prevent attainment or maintenance of national ambient air quality standards” (6 N.Y.C.R.R. § 201-5.3). Inspection, monitoring and reporting of actual emission rates and related ambient pollutant levels certainly meet this criterion.

Lazarus and Tai (1999) argue that the authority to add necessary permit conditions found in the omnibus provisions may extend to other operating conditions necessary to protect the public health. This authority has been recognized in dicta in multiple EAB decisions (*In re Chemical Waste Management*, 1995, p. 74; *In re Envotech*, 1995, p. 281) and applied in a handful of others (*Knauf II*, 2000 (noting significant reductions in the proposed limit for at least one pollutant); *In re AES Puerto Rico L.P.*, 1999, p. 351) (identifying several conditions included in a challenged based on community concerns)). In fact, the EAB has recognized that a permit may be denied altogether if it is “impossible to craft a set of permit terms that would protect the health and environment of [the affected] population” (*Chemical Waste Management*, 1995, p. 74). However, additional permit conditions or permit denials must be based on appropriate public health or environmental reasons, not on economic or other community impacts (Lazarus and Tai, 1999).

The administrative challenges discussed above were raised by environmental justice communities and involved permitting decisions where the agency, if it applied the E.O. 12898 explicitly, found no disparate impact, found that no additional permit conditions were required,

or imposed additional conditions that the community felt were minimal or inadequate. The legal question in these cases was whether the EPA did everything that it was obligated to do under the law. In one recent case, however, the challenge was raised by the regulated entity, which argued that the agency had exceeded its authority in imposing restrictions not obviously or explicitly required by the applicable regulations. The EAB upheld the EPA's decision, providing important confirmation of the regulatory agency's discretionary power to respond to community-specific concerns in the permitting process.

In *In re Upper Blackstone Water Pollution Abatement District* (2010), the EPA was considering the application of a waste water treatment plan for a National Pollution Discharge Elimination System (NPDES) permit. Such permits must ensure compliance with both technology-based limits and, in some cases, additional limits required to meet established water quality standards for the receiving water body, including narrative water quality standards (*In re Upper Blackstone*, 2010, p. 5 (citing 33 U.S.C. §§ 1311(b)(1)(A), (C))). Specifically, the regulatory agency issuing the permit must impose limits to restrict any discharges that cause, contribute to or have the reasonable potential to cause violations of water quality standards (*In re Upper Blackstone*, 2010, p. 31 (citing 40 C.F.R. § 122.44(d)(1)(i))). The permit applicant argued that there was considerable uncertainty regarding the contribution to any water quality violations that would be made by its facility and, therefore, the standards being imposed were not clearly warranted by the law. However, the EAB held that the EPA:

is not limited, as the District contends, to acting only where there is certainty of an existing causal link between a specific discharge and a particular violation of water quality standards. Instead, the regulation requires water quality-based effluent limits even when there is some degree of uncertainty regarding both the precise pollutant discharge levels and the potential causal effects of those discharges, so long as the record is sufficient to establish that there is a "reasonable potential" for that discharge to cause or contribute to a violation of water quality standards."

(*In re Upper Blackstone*, 2010, p. 31). In other words, where there is reason to believe that pre-defined limits will not adequately protect water quality or the environment, the EPA has the authority to set more stringent limits, even in the face of uncertainty regarding the exact level of protection required.

While the above case is grounded in the language of the CWA, there are linguistic similarities between the particular CWA provisions being interpreted here and the omnibus provisions contained in other federal environmental laws. The CWA reference to pollutants that “may be discharged” at levels that “which will cause, have the reasonable potential to cause, or contribute to” violations of water quality standards (40 C.F.R. § 122.44(d)(1)(i)), appears more expansive than comparable language in other federal environmental laws, such as the RCRA provision noting that hazardous waste permits should include those terms “necessary to protect human health and the environment” (42 U.S.C. § 6925(c)(3)). However, the more flexible language at issue in *In re Upper Blackstone* is included in implementing regulations, not statute. These regulations were issued to interpret a provision in the CWA substantially similar to more arguably more limited RCRA language. Specifically, the CWA states that permits must include technology-based limits and any more strict limit “necessary to meet water quality standards” (33 U.S.C. §§ 1311(b)(1)(A), (C)). Thus, the arguably more narrow terms in other federal laws may be interpreted to provide comparable authority to that found in *In re Upper Blackstone*. Moreover, permitting decisions are reviewed for clear error or abuse of discretion; reviewing courts do not redo the technical analysis to determine whether the agency reached ‘the’ correct answer (*In re Upper Blackstone*, 2010, p. 31. *See also Matter of Natural Resources Defense Council v. NY DEC*, 2012). More stringent emission limits may be considered reasonable, even if not compelled by a particular statute.

Accordingly, regulatory agency staff may have more flexibility than generally believed to tailor environmental permits in ways that avoid disproportionate adverse impacts or harms that only arise as a result of the particular vulnerabilities of the affected community. While agencies may not be able to simply deny the permit, staff should carefully consider whether the underlying federal laws allow imposition of slightly stricter emission limits or tighter controls.

### **III. Conclusion**

The EJ policy in and of itself can make public participation more effective in terms of access and social recognition. However, enhancements in voice, dialogue or institutional recognition rely on applicant attitude or agency action beyond that required under the EJ policy. While the agency has limited ability to promote more effective implementation, it can encourage applicants to follow some best practices, such as involving local organizations in outreach, providing multiple and variably formatted meetings and communicating more frequently and more transparently to the public. In addition, the agency itself can take some steps to enhance the effectiveness of public participation under the policy and to increase its own legitimacy and the legitimacy of the final decision.

Specifically, by listening carefully to public concerns and targeting monitoring and enforcement to respond to those issues in environmental justice communities, regulatory agencies can strengthen the effectiveness of public participation in terms of voice (i.e., community influence over the process), and institutional recognition (i.e., changes in the overall process and in the internalized role of the agency to reduce structural barriers to effective participation). By considering additional permit conditions related to monitoring and reporting where the affected community expresses concerns about future violations, the agency will again

be enhancing community voice and influence and, potentially, altering structural barriers to future community participation as watchdogs and citizen enforcers. Finally, by considering the potential for additional permit terms designed to limit community-specific adverse impacts to human health or the environment, the agency will again be strengthening the public voice criteria of effective public participation. While such actions are outside the norm for most regulatory agencies, both statutory language and relevant case law supports the availability of agency discretion and authority to do so.

In the next chapter, I summarize the results of this research and discuss the strengths and weaknesses of the final research design. In addition, I explore the questions raised by this work, the additional research needed to address these questions and key propositions for this future research.

## **Chapter 8: Conclusion and Further Research**

This research was designed to evaluate whether specific procedural changes in the review of environmental permits could make public participation more effective generally and, in particular, for environmental justice communities. The environmental justice movement, which addresses the disproportionate distribution of environmental hazards in communities of color and low-income communities, is particularly focused on effective public participation, defined as the meaningful involvement of all people in environmental decision-making regardless of race, ethnicity or class. New York's Environmental Justice policy, which was enacted in 2003 to address these concerns, seeks to provide enhanced public participation under certain circumstances through additional participation opportunities, tailored notice and outreach, and greater access to project-related information.

My initial hypotheses were that these changes would increase the overall effectiveness of public participation in ensuring procedural justice and justice as recognition and in terms of three specific criteria of effectiveness: access, recognition and legitimacy. My results demonstrate that the EJ policy was both more and less successful than predicted. Based on my data, the EJ policy appears to enhance the effectiveness of public participation in environmental permitting processes in terms of access and, to a lesser degree, social recognition and to create conditions under which improvements in voice, dialogue and institutional recognition are possible. However, the dialogue generated does not appear to reach the level of deliberative dialogue, which was one of my original criteria of effectiveness. Further, the EJ policy on its own does not require the kinds of changes necessary to ensure institutional recognition or engagement of the most disenfranchised communities in the affected area and, thus, falls short of a key

environmental justice goal. Finally, because there were no marked changes in legitimacy measures, I cannot assess the relative importance of particular criteria of effectiveness.

## **I. Developing Grounded Measures**

My first task in this research was to develop a set of grounded measures of effective public participation based in relevant theories of justice and democracy, the history of public participation, and the environmental justice movement itself. Prior research on public participation has generally used measures of success derived from the researchers' own framing of the purpose and benefits of public participation or from the preferences of "experts" or repeat players. These measures typically focused on structural elements of public participation models acknowledged as successful or the achievement of project-specific outcomes or broader social goals. However, they were not tied directly to theories of democracy, theories of justice, or even the legal structures that mandated the public participation. In an effort to develop more grounded measures of effective participation, I developed measures from the relevant literature on democratic and environmental justice theory and refined those measures through preliminary research with stakeholders and an assessment of the EJ policy itself.

As discussed in more detail above, the democratic theories most relevant to this analysis are a participatory form of traditional liberal democracy and deliberative democracy. Under traditional liberal democracy, public participation is intended to draw out the full range of individuals interests as defined by the participants themselves outside the political process (Dryzek, 2000) and to ensure that the final decision reflects and responds to them (Dahl, 1971, 1989). Public participation is effective when it allows the greatest number of interested parties to enter the process and to fully express their interests and positions. Deliberative democracy, on

the other hand, demands more of participants and is intended to help participants discover common interests and develop a shared vision of the common good, which should be reflected in the final decision (Barber, 1984, Sandel, 1984). Participants are expected to justify their preferences through rationales that might be publicly shared and to be open to similar rationales offered by others (Gutmann and Thompson, 1996). Under this model, public participation is only effective when it allows interested parties to listen carefully, test their own and others' ideas, and explore a range of potential solutions. Environmental justice theory, although less developed, embraces public participation processes that ensure the fair treatment and meaningful involvement of all affected people. Effective participation structures reduce or eliminate the internal and structural barriers to engagement and influence. The ultimate goal of these processes is to enhance the legitimacy of government decisions and to further some underlying form or marker of justice – distributive justice, procedural justice or justice as recognition.

Based on a literature review, I developed working definitions of each of these forms or markers of justice. Procedural justice was defined as meaningful access to and voice within a fair or unbiased decision-making process. Justice as recognition was defined as either social recognition, meaning acknowledgment and respectful treatment of individual participants within the existing public participation process, or institutional recognition, meaning acknowledgment of and willingness to modify institutional or structural barriers to participation by specific communities. Rather than focusing on a fair allocation of environmental hazards, distributive justice was defined as the application of sufficiently protective standards in all communities. The applicability of these definitions of justice within and their relation to public participation were then confirmed through interviews with environmental justice activists and advocates and agency

staffers and review of public comments in several public hearings in environmental justice communities reinforced the goals drawn from the literature.

Agency staff and community members generally accepted the definition of distributive justice as adequate environmental protection for all, but recognized that achieving this justice goal depended on permitting standards as much or more than the public participation process itself. Both groups agreed that procedural justice relied on structural markers of access, comparable treatment, and meaningful voice. Markers of meaningful voice were defined differently, however. Although both groups emphasized agency responsiveness, agency staff focused on responsiveness in the form of understanding and answering questions and incorporating new information into a defined review framework, suggesting a procedural justice focus, which invokes a simple form of dialogue or voice. Community members were more concerned with responsiveness in the form of agency efforts to deeply engage with community concerns and incorporate these issues into the review process, regardless of immediate compatibility with the established frame, which resonates more closely with justice as recognition. The largest discrepancies were in terms of justice as recognition. Agency staff focused on social recognition or respectful treatment of individuals across difference and efforts to welcome those individuals into the public process. Community members were more focused on institutional recognition, or the recognition and removal of institutional barriers to public participation and engagement with community concerns whether or not they fall within the typical scope of regulatory review.

Based on this preliminary understanding of the underlying justice theories, I defined six criteria of effectiveness in public participation: access and fair process, which are tied to the meaningful access prong of procedural justice and to theories of liberal democracy; voice and

deliberative dialogue, which are tied to the meaningful voice prong of procedural justice and to deliberative democracy; recognition, divided into social and institutional recognition and tied to environmental justice; and legitimacy. These criteria were then subdivided into more specific measures and sub-measures that could be concretely assessed.

## **II. Summary of Findings**

The study was designed to compare two permitting decisions where the EJ policy was applied to otherwise comparable permitting decisions conducted under standard participation norms. The cases selected for analysis involved the construction or dramatic expansion of solid waste transfer facilities and modifications to power generating stations. Data were gathered through interviews with participants, applicants and agency staff; review of the documentary record; and the administration of a written survey distributed to both process participants and non-participants in the affected community. As hypothesized, in the cases where the EJ policy was applied, there were marked improvements in access and some improvements in social recognition. The policy's effect on voice, deliberative dialogue, and institutional recognition were mixed with significant improvements in one environmental justice case and more limited benefits in the second. Finally, contrary to my initial hypotheses, the policy had no noticeable effects on fair process or overall perceptions of legitimacy.

Based on this research, New York's EJ policy made the biggest improvements in effectiveness of public participation in terms of objective measures of access (i.e., documented efforts to provide notice, accessible meetings, accessible information; and number of participants). In particular, documented efforts to provide notice, accessible meetings, and accessible project information were stronger. When measured against the relevant comparison

case, the environmental justice cases had more participants. The EJ policy's effect on diversity of representation was less clear, since the documentary record does not include demographic information. However, interviewees in environmental justice cases were no more likely to characterize participation as representative than interviewees in comparison cases. Further, despite documented efforts to reach out to diverse groups, there was no objective evidence of their involvement in the form of translation services being used or comments that showed difficulty with English.

Subjective measures of access (i.e., participant satisfaction with notice and the accessibility of information and meetings) were mixed. Participants across all cases expressed comparable rates of dissatisfaction with notice and access to information and comparable levels of satisfaction with access to public meetings, although environmental justice case participants were more likely to have gotten project-related information from the relevant applicant or agency. Environmental justice participants also raised more nuanced concerns about both notice and access to information. For example, although improved notice was the most frequent suggestion to improve public participation processes across all cases, suggestions from the environmental justice cases focused on specific tweaks in distribution methods and failures of notice were typically characterized as a lack of attention to detail. Within the comparison cases, suggestions were simply to provide notice and failures were more frequently characterized as intentional.

Changes in social recognition were smaller, but also generally positive. Objective measures of social recognition, focused on invitations for individual participation in the public process, were uniformly better in the environmental justice cases. Subjective measures such as participant assessments of respect shown to individuals, while not positive in environmental

justice cases, were uniformly less negative than in the comparison cases. Interestingly, negative subjective assessments tended to focus on the permit applicant or other involved agencies, rather than the state environmental agency. Subjective assessments of social recognition directed at the relevant environmental agencies were uniformly positive.

My data indicates that the EJ policy also appears to have conditionally positive impacts on the effectiveness of public participation in terms of voice, deliberative dialogue, and institutional recognition. Although subjective measures of voice (i.e., participant satisfaction) were comparable across the cases, objective measures (i.e., process and project changes) showed significant gains, particularly in one of the two environmental justice cases. In terms of deliberative dialogue, environmental justice cases also saw improvements based on objective measures of simple dialogue. However, these results were heavily skewed by the same environmental justice case which showed gains in voice. In addition, the measures specific to deliberative dialogue showed no real change, suggesting that the appropriate criterion is actually dialogue rather than deliberation. In terms of institutional recognition, objective measures related to the removal of institutional barriers to meaningful participation showed gains in the same environmental justice case.

The data trends related to voice, dialogue and institutional recognition revealed two interesting discrepancies. First, subjective measures of these criteria were generally more negative than objective measures within environmental justice cases, suggesting that participants had higher expectations of public participation where the EJ policy was applied than where it was not. Second, the measures were uniformly stronger for one environmental justice case (EC2) than the other. This suggests that while the EJ policy may create the opportunity for positive change, realizing this opportunity depends on the attitude of both the applicant and the

community. Specifically, where the applicant is open to changes in the outreach and review process or the project itself and the community is receptive to negotiating change, the EJ policy provides the forum. The cause of this disparate attitude is unclear from the data but may be related to the organizational culture of the applicant or the perceived strength of the affected community.

In addition, the details of the cases reviewed suggest that the EJ policy fails in one important respect. Although the EJ policy is intended to correct historic imbalances in access to and voice within permitting processes, it does not ensure that structural barriers to participation affecting the most disenfranchised segments of the geographically defined community are removed. By focusing simply on generating turn-out to public meetings in geographic areas that contain such disenfranchised populations, the EJ policy does nothing to ensure that more privileged groups within the defined area do not dominate discussion.

### **III. Limitations of the Research:**

The significance of this research is tempered by some inherent weaknesses. Although the project was designed to minimize those issues that were identifiable at the outset, concerns remain. First, as a case study focused on a limited number of projects, the generalizability of the findings is limited. Second, identifiable differences between matched case studies raise questions about internal validity. Last, because much of the data were drawn from the memory and assessments of human subjects, the reports may be biased, incomplete, or inaccurate.

The first concern relates to the generalizability and internal validity of the results. One of the general weaknesses of case studies is that they provide deep, but not broad, results. By design, case study research provides an in-depth look at a small sample. As a result, although understanding of the particular case is increased, case studies are often critiqued as providing

insufficient data for generalizing and, particularly, for the statistical analysis that is possible in survey research or other quantitative work. However, analytical generalization is possible by focusing on generalizing to theory rather than population and considering multiple cases (Yin, 2003). To facilitate generalization to theory, I drew heavily on justice theories and theories of public participation in general and on environmental justice theory in particular to design the research and interpret the results. In addition, I chose my environmental justice cases to vary on factors that might be considered relevant to the research question, including the type of permit being requested, the significance of the proposed change, and the level of technical complexity in the permit request. However, these variations do not encompass all potentially relevant factors and the small number of cases studied and the limited number of participants contacted through interviews and surveys limits generalizability.

In addition, to maximize the amount of data available for study, I limited my analysis to cases in which there were significant levels of participation. However, this may mean that the study communities are unique in ways that raise additional questions about generalizability. All four affected communities had a history of activism related to the facility at issue or to similar facilities. As result, at least some of the participants were familiar or comfortable with the administrative decision-making process and community organizing. In addition, all four communities had succeeded in blocking, dismantling, or modifying an environmentally undesirable project, which may have generated more enthusiasm for involvement in the new permit process and or buffered disappointment with less successful efforts in the cases studied. Generalizations from this work to less experienced communities, communities without existing capacity or without a sense that success is possible may be difficult.

Self-selection bias may also limit generalizability of the results. Surveys, in particular, are relatively easy to ignore and, although the survey was designed to take only 15 minutes to complete and extra efforts were made to personalize the contact, the return rates and the total number of surveys returned was too low for statistical analysis. Participants willing to take the time to be interviewed or complete a survey are likely to have been heavily involved in or have strong feelings about the process. In addition, the interviewees were drawn from participant lists, meaning that they were unlikely to have limited English skills, and, although the surveys were distributed in multiple languages to try to generate data from multiple ethnic groups, only three translated surveys were returned, two in Chinese and one in Spanish. Thus, if there are systematic differences between English and non-English speakers in terms of the survey data or of their public participation experiences, this study cannot account for those variations.

Internal validity is also a concern, because this research is designed to answer a causal question – whether and how the EJ policy affects public participation. Because case study research does not allow for a true comparison group or for statistical isolation of specific variables, key outcomes may be the result of extraneous factors. Internal validity can be enhanced by matching environmental justice cases with comparison cases that vary primarily on the suspected causal factor. Accordingly, my research design involved environmental justice and comparison cases matched by type of facility and permit, time frame, demographics and urban setting. Although I was able to find comparison cases that met these criteria, there were unexpected differences in terms of regulatory agency or applicant culture and demographic composition. The structure of community organizations and scope of organizing efforts also varied across environmental justice and comparison cases.

First, because DEC took a cautious approach to application of New York's EJ policy, the EJ policy was applied to almost all major permit applications within the New York City area. As a result, I had to draw one comparison case from an adjacent area in New Jersey. Although the permitting and standard public comment process in New York and New Jersey are similar, there are minor differences in process and there may also be cultural differences between the regulatory agencies, the applicants, or the communities themselves that affected the result.

Second, the demographics of two study communities varied from the original plan. Given the broad application of the EJ policy, the minority population in one of the environmental justice cases (EC1) was lower than expected and, as a result, I adjusted acceptable demographic ranges for the comparison case (CC1). In the end, the minority population in both cases was lower than expected (47% minority within a one-mile radius of the EC1 facility; 29% minority within a one-mile radius of the CC1 facility). Although the minority populations within the two communities were within the 20% range anticipated, the relatively small number of minorities in CC1 may have had some impact, particularly on the recognition-related measures.

Community demographics also differed significantly in terms of ethnic and racial diversity. In particular, the communities in one environmental justice case (EC2) and one comparison case (CC1) were dominated by a single race or ethnicity, while the other communities were more diverse. Specifically, the population within a one-mile radius of EC2 was 62% Hispanic, while the population within a one-mile radius of CC1 was 71% non-Hispanic white. The other communities were more diverse with either a bare majority of non-Hispanic whites (53%), including a significant Eastern European immigrant population (EC1), or a rough balance between non-Hispanic whites (46%) and Hispanics (30%) (CC2). Communities that are more uniform in terms of ethnicity may be more likely to have well-developed social ties and

networks (Putnam, 2007) and, as a result, to be better able to organize and exercise influence in a permitting process. The variations in community diversity between matched cases may account for some of the differences seen in community influence or voice, as well as level of participation.

Last, the structure of the active community organizations and the scope of organizing efforts differed significantly. In one case (EC2), a lead community organization emerged, creating an easy access point for applicant outreach efforts, which encompassed both community groups and individuals. In the relevant comparison case (CC2), organizing efforts were led by the active remnants of a community coalition and focused on ensuring participation from professionalized groups. In the second environmental justice case (EC1), activists formed a loose coalition to organize outreach and coordinate strategy, while the comparison case (CC1) activists did not create any formal group or coalition and focused their efforts on notifying neighbors and developing individual talking points. These differences may affect both the ease with which applicants can engage with community opposition and the perceived cost to applicants of not doing so.

The final limitation of the study is a function of the internal reliability of the data. As a qualitative study, many of the measures relied on participant assessments. This creates several problems. First, the permitting processes in all of the projects selected were completed one to two years before the study began, raising questions of the accuracy of participants' memories. In addition, these memories and subjective participant assessments might be biased by the eventual decision on the permit and, in two cases, are complicated by the presence of multiple levels of review and reviewers. To mitigate concerns about accuracy and attribution, I confirmed interviewee memories through the documentary record and other narratives to the extent

possible. During interviews, I repeatedly asked which review processes and reviewers were being referenced in particular responses. I also asked interviewees to compare their experiences across review processes and reviewers. Finally, I drafted survey questions to address a specific agency or applicant. Concerns about bias are somewhat limited by the fact that all cases resulted in permit issuance. Any cynicism generated by the negative decision contrary to public preferences was likely to be comparable across all four cases.

#### **IV. Implications for Further Research**

This research suggests that the EJ policy is most effective in improving procedural justice in the form of access and in improving a minor marker of environmental justice in the form of social recognition. In addition, the EJ policy creates the opportunity for improvement in elements of procedural justice tied to voice and dialogue and to a major marker of environmental justice in the form of institutional recognition. However, application of the EJ policy alone does not fully explain differences in the number and diversity of participants or whether opportunities for expanded voice, dialogue, and institutional recognition are realized. Additional research is needed to identify and determine the relative importance of these other factors that might explain differences observed between the cases studied.

First, additional research is needed to understand the relative importance of the source and tone of notice. Although the notice provided by applicants in the environmental justice cases was widely distributed and provided important details about the project and the process, participants rarely identified applicant-issued notices as their primary or initial source of information about the project. Instead, most participants relied on and were motivated to participate by notice from neighbors or community organizations.

Community-generated outreach differs from applicant or agency-generated outreach in two ways. Most obviously, the individuals or community groups issuing the notice are more likely to be known and trusted sources. However, community-generated notices or outreach material are also different in tone from applicant-generated materials. While applicant- or agency-generated notice was neutral or positive, community-generated materials tend to provide more detail about potential impacts of a proposed project and to describe an “urgent,” “vital,” or “important” need for community action. This information may make the project more salient to individuals and increase the likelihood of their participation. Additional research that would separate these factors may be important to untangle the relative importance of source of notice versus tone and to understand whether applicants or agency staff can modify notice methods to ensure greater turn-out without the direct involvement of community organizations and without inviting opposition to their proposed projects.

Second, the attitude of the applicant and/or the agency appears to be an important factor in achieving voice, dialogue and institutional recognition. Where the applicant or agency is open to change and disposed to be responsive to and engaged with the community, there are greater improvements in these criteria. The impetus for this openness to change in the review process or the project itself and to more engaged discussions, however, is unclear. Some participants attributed this attitude to internal organizational culture, suggesting that it was applicant-driven. Others argued that the applicant was simply recognizing the presence of a strong and well-organized community that could take action to block or delay a project, suggesting that the attitude was community-driven. Additional research is needed to determine the relative contribution of organizational culture and an empowered community in creating the necessary openness toward change.

Third, additional research is necessary to tease out other factors that might be relevant to generating meaningful dialogue. For example, the greatest gains in voice, dialogue, and institutional recognition occurred in the community with the most homogeneous population (EC2), even though that population was predominantly minority. This community was also unique in terms of the structure of organized community opposition. In that case, a single long-established community organization emerged as the lead community organization and dominant dialogue partner. In two cases (EC1 and CC2), community opposition was led by a loose coalition of environmental and community organizations with unclear leadership. The communities themselves were far more diverse with some indicators of a changing demographic. In the final case (CC1), the community was fairly homogeneous and stable, but community opposition was led by a handful of well-known individual community activists with no organizational involvement. These structural differences may have had a significant impact on the effectiveness of dialogue-related measures. The goals of organizing efforts also varied between the cases, with one focused only on individual turn-out (CC1), one on organizational involvement (CC2) and the others striking a balance between the two (EC1 and EC2). The effects of community identity and the related differences in organizing strategy and structure should be further explored.

Last, the use of alternative meeting structures in public engagement is worth further investigation. While the one-on-one and group-specific meetings incorporated into the EC2 public participation plan appear to have been very effective at improving voice, dialogue, and institutional recognition for that subset of community groups involved, there were also indications in this case that other individuals or groups felt excluded and disempowered. In addition, such meetings can result in agreements that split communities or only reflect the

interests of the most active participants and may eliminate important organizational benefits of public hearings. Further investigation of the costs and benefits of such alternative methods of community engagement, particularly within environmental justice communities would be helpful.

Specifically, future research should investigate the following propositions, which are derived from the results of this study:

- (1) Levels of engagement and number of participants will be higher in communities with a strong sense of place or shared community identity than in more transient communities, regardless of form of notice.
- (2) The tone of notice will be more important in generating community response than the source of notice – that is, neutral notices from community organizations will be less successful in generating participation than notices or outreach that highlights significant concerns or potential problems with a facility.
- (3) Community voice, deliberative dialogue and efforts to provide institutional recognition will be stronger in communities where the applicant is working with an established and tightly bound network of community organizations than in communities with a loose coalition of representative groups.
- (4) Applicant and/or agency attitude toward public engagement, openness to change and responsiveness to community input will be more influenced by overall organizational cultures than by the strength of particular communities.

## **V. Conclusion**

Overall, the EJ policy was more successful than anticipated in terms of creating points of access to the permitting process and ensuring respectful treatment of participants and was conditionally successful in terms of ensuring community voice, encouraging dialogue and providing institutional recognition. Given these results, New York's EJ policy could be successfully exported to other public hearing processes that share these goals, and used as a model for environmental justice policies in other states.

To more consistently enhance deliberative democracy and environmental justice norms, DEC will have to encourage applicants to be open to tailored community outreach, direct community engagement and collaboration with community organizations to design and implement that outreach. In addition, DEC should encourage applicants to use best practices suggested by this research, such as holding multiple meetings, using alternative meeting structures, and communicating frequently with the community. Similarly, to enhance its own legitimacy and the legitimacy of its decisions, DEC should be open to investigating community-specific concerns, even if inartfully or incompletely framed; be more transparent about its analysis and decision-making; and be more aggressive in providing protection to environmental justice communities through targeted monitoring and enforcement efforts. These changes, which can be implemented under existing law and policy, should ensure more effective public participation in the affected permitting processes.

**APPENDICES**

**APPENDIX 1:**  
**Recruitment Letters for**  
**Preliminary Research on Situated Understanding of Effective Public Participation**

**RECRUITMENT LETTER FOR ACTIVISTS/ADVOCATES**

DATE

NAME  
ADDRESS  
CITY, STATE

RE: RESEARCH REQUEST

Dear NAME:

My name is Alma Lowry and I'm a PhD student at Syracuse University. I'm contacting you because your organization has been actively involved in the public comment/public participation portion of a recent environmental siting decision. I'd like to interview you about your environmental work and, in particular, your experiences with and opinions of the public participation process.

As a former practicing attorney who worked on urban environmental issues in Detroit and Washington D.C., I saw both a great deal of frustration with existing participation norms and a lot of hope that revamped public participation processes might be a way to achieve environmental justice. My current research is focused on better understanding public participation processes, particularly those affecting environmental justice communities, and in understanding what would make those processes effective and helpful for the community.

I'm sure that you get requests for interviews or information regularly and that your time is limited. I would guess that this interview would take between one and two hours and could be done over the phone or in person at your convenience. If you'd rather have me speak to someone else in your organization, I'm happy to take those recommendations as well.

Please let me know whether you would be willing to be interviewed and, if so, when you might have time to talk to me. You can contact me at the above e-mail address or by phone at 315-XXX-XXXX.

Thanks for considering this request!

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship

**RECRUITMENT E-MAIL FOR AGENCY STAFF**

Dear DEC Staff/Dear NAME:

I'm a PhD student at Syracuse University, doing research on public participation in environmental decision making and, in particular, decision making that affects minority or low-income communities. As part of that work, I would like to interview DEC staff who regularly work on projects that include a public participation component. This research will inform my dissertation, which will be looking at the effects of CP-29 (the environmental justice policy) and the enhanced public participation plans required under that policy. However, I'm interested in agency experiences of and expectations for a range of participation opportunities -- from CP-29 processes to standard legislative hearings to citizen task forces.

The interviews will focus on your role in public participation, your good and bad experiences with participation processes and your expectations for these processes. Typically, interviews take between an hour and an hour and a half and can be done by phone. All information will be kept confidential and your name won't be used in any publications or reports generated from this research.

If you would be willing to be interviewed, please contact me at 315-XXX-XXXX or 315-XXX-XXXX. You can also contact me by e-mail at [allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu).

I look forward to hearing from you. Thanks in advance for your help!

Alma Lowry  
PhD Student/Social Sciences  
Maxwell School/Syracuse University

**Appendix 2:**  
**Semi-structured Interview Questions for**  
**Preliminary Research on Situated Understanding of Effective Public Participation**

Community Activist/Environmental Justice Advocate/Agency Staff Interview:

- (1) Tell me a little bit about your day-to-day work (for volunteers: role in the permitting campaign).
- (2) What type of public participation methods or processes are you typically involved with (for volunteers: were you involved with)? What formal public participation methods?
- (3) Thinking back over your work, are there projects or decision-making processes where the public participation element was particularly effective? (For volunteers: Thinking back over your work on this project, were there times when the public participation element worked particularly well?) Tell me more about that. Why does that project stand out to you?
- (4) Were there particular projects or public decision-making processes where the public participation element was particularly ineffective? Tell me more about that. Why does that project stand out to you?
- (5) What do you hope to gain from public participation? Why is it valuable to you?
- (6) Do you ever advise others (community members, co-workers, other volunteers, industry) about public participation requirements? What, if anything, do you tell them about the reasons for public participation? What, if anything, do you tell them about the value of public participation?
- (7) In your opinion, does public participation generally meet your expectations of or goals for it? (If yes) How? (If no) How does it fall short? What could be done differently to meet your expectations?
- (8) Think about your ideal public participation process? What does it look like? Can you walk me through it?
- (9) Are there other people that you think I should talk to?

**Appendix 3:**  
**Recruitment Letters for Semi-structured Interviews for**  
**Comparative Case Study Research on Effectiveness of Public Participation**

**APPLICANT RECRUITMENT LETTER**

DATE

NAME  
COMPANY NAME  
ADDRESS  
CITY, STATE

**Re: Public Participation Research**

Dear NAME:

My name is Alma Lowry and I'm a PhD student at Syracuse University. I'm contacting you because, as part of my dissertation research on public participation in environmental decision-making, I'm studying the [description of relevant permitting process]. As part of that research, I'd like to interview someone representing the permit applicant about your experience with this process.

The information you provide would help provide a complete picture of the public participation process in this case. The goal of this research is to better understand how public participation processes work; how to make those processes more effective and helpful; and, particularly, whether environmental justice concerns can be resolved through expanded public participation. Getting the perspective of the permit applicant is important to make sure that I get a balanced view of the proceedings.

I believe that this interview should take about an hour and could be done over the phone or in person at your convenience. If you would be willing to speak to me, please contact me by e-mail ([allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu)) or by phone (315-XXX-XXXX). If I don't hear from you, I'll be in touch again in the next week or two to see if you have any questions or would like to schedule an interview.

Thanks for considering this request!

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship  
(315)XXX-XXXX (cell)

**PARTICIPANT RECRUITMENT LETTER**

DATE

NAME  
ADDRESS  
CITY, STATE

**Re: Public Participation Research**

Dear NAME:

My name is Alma Lowry and I'm a PhD student at Syracuse University. I'm contacting you because you have expressed interest in or have participated in a public meeting or hearing related to the permits sought for INSERT NAME OF PROJECT HERE. I'd like to interview you about your expectation of and experience with this process so far.

The information you provide would be used in my research on public participation in agency decision-making and particularly in decisions that affect low-income and minority communities or environmental justice communities. The goal of this research is to better understand how public participation processes work; how to make those processes more effective and helpful, particularly for environmental justice communities; and whether environmental justice concerns can be resolved through expanded public participation.

I believe that this interview should take about an hour and could be done over the phone or in person at your convenience. If you decide to take part in the research, I would like to speak to you again after the public participation process is over. If you would be willing to speak to me, please contact me by e-mail ([allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu)) or by phone (315-XXX-XXXX). If I don't hear from you, I'll be in touch again in the next week or two to see if you have any questions or would like to schedule an interview.

Thanks for considering this request!

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship  
(315)XXX-XXXX (cell)

**AGENCY STAFF RECRUITMENT LETTER**

DATE

NAME  
AGENCY NAME  
ADDRESS  
CITY, STATE

**RE: Public Participation Research**

Dear NAME:

My name is Alma Lowry and I'm a PhD student at Syracuse University. I'm contacting you because you were directly involved in the permitting process for INSERT NAME OF PROJECT HERE. I'd like to interview you about your expectation of and experience with this process.

The information you provide would be used in my research on public participation in agency decision-making and particularly in decisions that affect low-income and minority communities or environmental justice communities. The goal of this research is to better understand how public participation processes work; how to make those processes more effective and helpful, particularly for environmental justice communities; and whether environmental justice concerns can be resolved through expanded public participation.

I believe that this interview should take an hour or less and could be done over the phone or in person at your convenience. If you decide to take part in the research, I would like to speak to you again after the public participation process is over. If you would be willing to speak to me, please contact me by e-mail ([allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu)) or by phone (315-240-6678). If I don't hear from you, I'll be in touch again in the next week or two to see if you have any questions or would like to schedule an interview.

Thanks for considering this request!

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship  
(315)240-6678 (cell)

**Appendix 4:**  
**Semi-structured Interview Questions for**  
**Comparative Case Study Research on Effectiveness of Public Participation**

**Semi-Structured Interview Questions for Participant Interviews:**

**(1) I asked to interview you because of your involvement in the DATE permitting process for PROJECT. Can you tell me a little bit about how you got involved in the permitting process for PROJECT?**

- Where did you first hear about the project? Who told you about it?
- What made you decide to become involved in the permitting process?

**(2) I'd also like to know a little bit more about what your involvement looked like. Can you tell me how you participated in the process (i.e., attended hearings, filed comments, organized community, etc)?**

- Did you try to learn more about the project before taking this action? How did you do that? Did you feel that you got the information you needed?

**(3) Now I'd like to get your impressions of the process. Can you tell me what you remember most about the hearing?**

- Able to raise questions and concerns?
- Did the agency/applicant take your concerns seriously? What makes you think that?
- Did you feel welcome at the hearing? Was it a comfortable place for you?
- Was there anything else that struck you about the hearing itself? (Number of participants? Representativeness of participants? Tone of comments? Receptiveness of  
*(Did you attend more than one hearing? How were they different?)*)

**(4) I also want to know how you saw your contributions – or the contributions of other members of the public – affecting the project review or the project itself.**

- Were you happy with the decision that the agency made in this case?
- Questions answered? Requested changes made? Additional review done?
- Overall, were you satisfied with the process? With the outcome?

**(5) I have a few final questions about your involvement with public decision-making in general.**

- Active in community presently? At the time of hearing? More or less involved then?
- Would you participate in permitting processes in the future? Why?
- Trust in DEC? In other state agencies?
- Do public participation processes (hearings, comment periods, etc.) work as they should? If not, what changes should be made?

**Semi-Structured Interview Questions for Applicant Interviews:**

**(1) I asked to interview you because of your involvement in the DATE permitting process for PROJECT. Can you tell me a little bit about your role in the permitting process for PROJECT?**

- What was your official role in the public participation aspects of the permitting process?
- When did you become involved in planning the public comment/participation component?
- Have you been involved in other public participation processes? How many? Were they similar to this process?

**(2) Let's move to the planning process itself. Can you tell me a little bit about how the enhanced participation plan was developed?**

- What were the key elements of that plan in your opinion? How did you decide on those elements?
- Did you consider other methods of providing notice? Other types of community meetings/forums? Other ways of responding to public input? (If yes:) Why did you choose not to do those other things?
- Did the participation plan change at all over the course of the permitting process? How? What prompted that change?
- How did the public participation component of this decision compare to that of other government decisions/siting processes that you've been involved in? To the participation required for other public decisions related to this project?

**3) Now I'd like to get your impressions of the process. Can you tell me what you remember most about the EJ informational meeting/AGENCY hearing?**

- What did you see as your primary role (your organization's primary role) at these hearings?
- What were the community's reaction to this project? What were the primary concerns expressed at the EJ informational meeting? At the AGENCY hearing (if any)? In written comments?
- Did you see changes in the concerns expressed by the public over time?
- Tell me a little more about the meetings/hearings. What was the dynamic like (calm? conversational? hostile?) Did that dynamic change over time?
- From what you remember, how many people (from the public) attended the meetings/hearings? From what you remember, were the participants representative of the community (ethnically, age-wise, etc.)?
- Was there anything else that struck you about the meetings/hearings itself? How did these meetings/hearings differ?

**(4) I also want to know how you saw the contributions of the public affecting the project review or the project itself.**

- Did you feel that your organization was able to find good answers to public questions? What about the DEC? If not, why not?

- Did your organization make any changes to the project in response to public comment? To the process? Do additional assessments or testing? Take any other direct action?
- What would you say the public's goal (or goals) were for their participation in the public comment aspects of this project? To what extent do you think this process addressed those concerns or met those goals?
- Overall, were you (your organization) satisfied with the process? Did it meet your goals for public participation? Were you satisfied with the outcome?

**(5) I have a few final questions about your involvement with public decision-making in general.**

- Given this experience, do you think your organization would be willing to site another facility in an area requiring an enhanced public participation plan? Would you be willing to take a lead role in planning?
- Are there things that you (or your organization) would do differently within the public participation requirements as they now stand?
- Are there things that you think should be changed in the public participation requirements?
- Are there any elements of the enhanced public participation plans required for EJ communities that you or your organization might incorporate into the pre-permitting process for projects that don't trigger the policy?

**Semi-Structured Interview Questions for Agency Interviews:**

- (1) Generally, what is your role in the public engagement required for major permits?
- (2) Typically, how does [YOUR AGENCY] solicit public involvement/participation in permitting decisions? What do you see as the purpose of public involvement?
- (3) Was your involvement in the public participation aspect of the [RELEVANT PERMITTING PROCESS] different from the norm in any way? Do you remember anything unique about the public participation process for [THE RELEVANT PERMITTING PROCESS]?
- (4) Were you familiar with this community before this permitting process? Were you aware of any history of activism [IN THE RELEVANT COMMUNITY]? If so (or if you had been aware), did it (would it have) made any difference in the approach that you took for the public participation relevant to this permit?
- (5) Did THE AGENCY take any special steps to notify the public? To get project information to the public? To respond to (or get information about response to) the public?
- (6) As best as you can recall, did the public raise any new issues during the comment period? Did [YOUR AGENCY] conduct or require any additional review based on issues raised by the public? [If yes: Please tell me more about that additional review. If no: Why did you feel that no additional review was needed?]

(7) As best you can recall, did the public make any suggestions for changes in the project or the review process? Did [YOUR AGENCY] make any changes to process or to the project based on public input or direct suggestions for change? [If yes: Please tell me more about those changes. If no: Why did you feel that no changes were needed?]

(8) Tell me a little bit about the public hearing in [THE RELEVANT PERMITTING PROCESS]. How did it compare to other public hearings that you've been involved with? How many people participated? Did they seem representative of the community?

(9) Have you had much contact with the community near the facility since the modification was granted? What is the relationship between [YOUR AGENCY] and the community like now?

(10) Are there any changes in the public participation process that you think might have made the review of [RELEVANT PERMITTING PROCESS] better?

**APPENDIX 5:**  
**Survey Materials Including Initial Contact Letter,**  
**Cover Letter and Survey,**  
**Postcard Reminder and Final Reminder Letter**  
**(Generic English Version)**

**INITIAL CONTACT LETTER**

NAME  
ADDRESS  
CITY, STATE

DATE, 2011

Dear Community Resident:

When an industrial facility that may threaten the environment, public health or quality of life of a community is proposed, public participation or review processes are often the best or only way for residents to raise concerns about the project. However, public review processes may not be effective if community residents don't hear about them or don't feel heard in them. Understanding how and why people become involved and what makes them feel heard is important to make sure that these processes work well for communities like yours.

In YEAR, FACILITY NAME was proposed for your community. A public review process including public hearings or meetings was conducted. Your household has been randomly selected to participate in a survey on that public review process. Your participation in the survey is voluntary.

You will receive a survey in the mail in the next week. The person in your household who is over 18 years old and was most involved in the public review of the FACILITY NAME project should complete the survey. If no one in your household participated in that process, please have the person who is over 18 and is most involved in the community complete the survey. If you have questions about the survey or the way that the data will be used, please contact Alma Lowry at 315-XXX-XXXX or [allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu). Thanks so much for your time and your help with this research!

Sincerely,

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship and Public Affairs

**SURVEY**  
**ACHIEVING JUSTICE THROUGH PARTICIPATION**

This survey is part of an academic study on the effectiveness of state procedures for including public views in environmental decision-making. You have been asked to complete this survey because you live near FACILITY NAME. In YEAR, APPLICANT provided details about PROJECT NAME to the community and began the process of getting permission from local authorities and the PERMITTING AGENCY to complete the project. As part of that process, the public was given the chance to become involved.

This survey will be helpful in understanding how well this public review process worked. It should be completed by a member of your household who is over 18 years old and was most involved with the PROJECT NAME or is most active in the community.

**QUESTIONS:**

(1) How did you learn about PROJECT NAME?

Saw a notice in the newspaper	_____	Heard about it from a neighbor	_____
Saw a flyer posted in a public place	_____	Heard about it from a community or	_____
Contacted by the permit applicant	_____	environmental organization	_____
Contacted by AGENCY staff	_____	Read or saw a news article about it	_____
Did NOT know about it	_____	Other (please describe: _____)	_____

(2) Did you participate in the public review of the PROJECT NAME PERMIT?

Yes: \_\_\_ No: \_\_\_

**If you checked NO, please skip to QUESTION 11.**

(3) I took part in the public review of PROJECT NAME PERMIT by (please check all that apply):

Attending a public meeting sponsored by the PERMITTING AGENCY	_____
Attending a public meeting sponsored by APPLICANT	_____
Speaking at a public meeting sponsored by the PERMITTING AGENCY	_____
Speaking at a public meeting sponsored by APPLICANT	_____
Writing to AGENCY or APPLICANT	_____
Talking to AGENCY or APPLICANT staff outside public meetings	_____
Attending community meetings not organized by AGENCY or APPLICANT	_____
Organizing other community members to participate	_____
Attending a protest about the project	_____
Organizing a protest about the project	_____
Other (Please describe: _____)	_____

(4) Why did you decide to participate in the public review of the PROJECT NAME?

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(5) Please indicate how strongly you agree with the following statements regarding the public participation process for the permit requested by APPLICANT:

	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
AGENCY staff listened to and considered my concerns about the project.					
The decision about the project was made before the public got involved.					
AGENCY was most concerned about meeting APPLICANT'S needs.					
AGENCY or APPLICANT provided clear, complete information about the project and its effects.					
Public meetings were scheduled at convenient times.					
Public comments significantly influenced the final decision.					
Participating in this process was a waste of my time.					
Public comments significantly influenced the analysis done.					
Public meetings were held at places that were convenient for me.					
AGENCY didn't listen to public concerns.					
AGENCY or APPLICANT fully answered my questions about the project.					
I was able to get information about the project in a timely way.					
The final decision on this project was reasonable based on the facts.					
The review process was fair.					
APPLICANT had a legitimate need for the project.					

(6) Before participating in this public review for this project, did you participate in other AGENCY public review processes?

Yes: \_\_\_\_\_ Approximately how many? \_\_\_\_\_  
 No: \_\_\_\_\_ **IF NO, SKIP TO QUESTION 8.**

(7) Compared to the other public review processes in which you've participated, how responsive was this process to public comments?

More responsive \_\_\_\_ Less responsive \_\_\_\_ About the same \_\_\_\_ Don't know \_\_\_\_

(8) Overall, how satisfied were you with the public review for the PROJECT NAME?

Very satisfied \_\_\_\_ Satisfied \_\_\_\_ Dissatisfied \_\_\_\_ Very dissatisfied \_\_\_\_ No opinion \_\_\_\_

(9) Given this experience, how likely are you to participate in the public review of other potentially harmful projects proposed for your community?

More likely \_\_\_\_ Less likely \_\_\_\_ About as likely \_\_\_\_ Don't know \_\_\_\_

(10) Do you think the public participation process could be made more effective?

Yes: \_\_\_\_ No: \_\_\_\_ If yes, what changes would you suggest? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SKIP TO QUESTION 13.**

(11) Why did you decide **NOT** to participate in the public review of the PROJECT NAME?  
(Please check all that apply.)

- I didn't feel the project would affect me. \_\_\_\_\_
- I didn't know enough about the project or its effects to participate. \_\_\_\_\_
- Public meetings or hearings were scheduled at inconvenient times. \_\_\_\_\_
- Public meetings or hearings were scheduled at inconvenient locations. \_\_\_\_\_
- My participation wouldn't make any difference in the result. \_\_\_\_\_
- The AGENCY can be trusted to do the right thing without my participation. \_\_\_\_\_
- I didn't have enough information about public meetings, hearings or other participation opportunities. \_\_\_\_\_
- I didn't have the time to participate. \_\_\_\_\_
- I don't feel comfortable speaking in public. \_\_\_\_\_
- Others in the community were representing my views as well as I could. \_\_\_\_\_
- I didn't live in this neighborhood in YEAR \_\_\_\_\_
- Other (Please describe: \_\_\_\_\_)

**If you checked "Didn't live in this neighborhood," please STOP NOW and return this survey in the enclosed self-stamped, self-addressed envelope.**

(12) What changes, if any, to the public participation process would make it more likely that you would participate in the future? \_\_\_\_\_

\_\_\_\_\_

(13) For each of the following statements, please indicate whether you strongly agree, agree, disagree, strongly disagree or have no opinion:

	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
Most government agencies can be trusted to do the right thing.					
AGENCY's procedures and practices respect the rights of communities.					
Most government agencies have the public's interests at heart.					
AGENCY wouldn't approve a project that could hurt people or the environment.					
Most government agency staff are courteous and respectful to the public.					
AGENCY treats individuals and businesses with the same respect.					
Government agency staff are generally well-trained and knowledgeable in their fields.					
AGENCY staff are generally knowledgeable and well-trained.					
AGENCY staff tend to favor business interests over the public interest.					
AGENCY staff would prefer not to deal with public concerns.					
AGENCY staff are generally courteous and respectful to the public.					
AGENCY bases its decisions on good science.					

(14) For each pair of statements, please indicate which comes closer to your views, even if neither is exactly right.

- (a) Human nature is basically bad and you can't be too careful with people. \_\_\_\_\_  
 Human nature is basically good and people can be trusted. \_\_\_\_\_
- (b) Government is really run for the benefit of all the people. \_\_\_\_\_  
 The government is really run for the benefit of people with money and position. \_\_\_\_\_
- (c) Given the choice, most people will do the right thing, even if it's not best for them. \_\_\_\_\_  
 Given the choice, most people will do what's best for them, even if it's not right. \_\_\_\_\_
- (d) Industry will do what it takes to comply with laws and regulations, regardless of cost. \_\_\_\_\_  
 Industry will do what it takes to reduce costs, regardless of laws and regulations. \_\_\_\_\_

(15) Please indicate how often you have done the following over the past 12 months:

	Never	Once or twice	A few times	Frequently	Don't know
Voted in a federal, state or local election					
Contacted a public official for help with a community problem					
Contacted a public official for help with an individual problem					
Contacted a public official to express your opinion					
Contributed money to a political party, candidate or other political cause					
Volunteered for a political party, candidate or other political cause					
Tried to persuade others to support a political party, candidate or political cause					
Worked with neighbors to help solve a community problem					
Discussed politics or community problems with family or friends					
Participated in a protest or demonstration about a community problem or political issue					

(16) Have you become more involved or less involved in political activities like those in Question 15 since public review of the PROJECT NAME began in YEAR?

More involved \_\_\_\_ Less involved \_\_\_\_ About the same \_\_\_\_ Don't know \_\_\_\_

(17) With which community organization(s) are you regularly involved now (please check all that apply):

Local church \_\_\_\_\_ Neighborhood improvement organization \_\_\_\_\_  
 Local school organization \_\_\_\_\_ Community service organization \_\_\_\_\_  
 Neighborhood Watch \_\_\_\_\_ Local environmental organization \_\_\_\_\_  
 Other (Please describe: \_\_\_\_\_) \_\_\_\_\_

(18) With which community organization(s) were you regularly involved in YEAR (please check all that apply):

Local church \_\_\_\_\_ Neighborhood improvement organization \_\_\_\_\_  
 Local school organization \_\_\_\_\_ Community service organization \_\_\_\_\_  
 Neighborhood Watch \_\_\_\_\_ Local environmental organization \_\_\_\_\_  
 Other (Please describe: \_\_\_\_\_) \_\_\_\_\_

**DEMOGRAPHICS:** The following questions are used solely for analytical purposes.

(19) Please indicate your racial/ethnic category (please check all that apply):

White/Caucasian \_\_\_\_\_ African American/Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Asian \_\_\_\_\_  
Pacific Islander \_\_\_\_\_ Native American \_\_\_\_\_ Other (please describe): \_\_\_\_\_

(20) What is the highest level of education that you have completed?

Some high school \_\_\_\_\_ High school/GED \_\_\_\_\_ Some college \_\_\_\_\_  
College degree \_\_\_\_\_ Graduate/professional degree \_\_\_\_\_

(21) Please indicate the category that best describes your household income:

Under \$15,000 \_\_\_\_\_ \$15,000 to \$22,050 \_\_\_\_\_ \$22,051 to \$44,100 \_\_\_\_\_  
\$44,101 to \$60,000 \_\_\_\_\_ \$60,001 to \$75,000 \_\_\_\_\_ More than \$75,000 \_\_\_\_\_

(22) What is your age?

Under 25 \_\_\_\_\_ 25-34 \_\_\_\_\_ 35-44 \_\_\_\_\_ 45-54 \_\_\_\_\_ 55-64 \_\_\_\_\_ 65 or over \_\_\_\_\_

**Please return the COMPLETED SURVEY in the enclosed self-addressed, self-stamped envelope. If you have any questions, please contact me at [allowry@hamilton.syr.edu](mailto:allowry@hamilton.syr.edu) or at 315-XXX-XXXX. You may also write (or send completed surveys) to:**

**Alma Lowry  
ADDRESS  
CITY, NY ZIP**

**THANK YOU FOR YOUR TIME AND YOUR HELP!**

**POSTCARD REMINDER**

Dear Community Resident:

I recently sent you a survey about public participation. If you've returned the survey, thanks! If not, please take a few minutes to do so. Your input is valuable!

Hace poco le envié una encuesta sobre la participación del público. Si usted ha regresado a la encuesta, gracias! Si no, por favor, tómese unos minutos para hacerlo. Su participación es importante!

最近，我给您发了关于公众参与调查。如果您返回的调查，谢谢！如果没有，请花几分钟时间这样做。您的意见是宝贵的！

Questions? ¿Preguntas? 有问题吗? Contact Alma at [allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu) or 315-XXX-XXXX.

**FINAL REMINDER LETTER  
ENGLISH VERSION**

DATE, 2011

Dear Community Resident:

A few weeks ago, I sent you a survey about public participation in government agency decision-making and, specifically, on the PROJECT NAME. I haven't gotten a response from you yet. Public participation processes may be the only way for community members to raise concerns about a project, but they are often ineffective. Understanding how and why people become involved and what makes them feel heard is important to making sure that these processes work well for communities like yours. Whether or not anyone in your household participated, your input is valuable. For that reason, I am contacting you one more time to ask for your help.

Your participation is voluntary. However, the survey should only take about 15 minutes to complete. Your response will be kept confidential. I will use a code, not your name or address, to track responses. I have included another copy of the survey with this letter. Please ask the person in your household who is over 18 years old and was most involved in the public review of the PROJECT NAME or is most involved in the community complete the survey.

If you have questions about the survey or the way that the data will be used, please contact Alma Lowry at 315-XXX-XXXX or [allowry@maxwell.syr.edu](mailto:allowry@maxwell.syr.edu). Thanks so much for your time and your help with this research!

Sincerely,

Alma Lowry  
PhD Candidate/Social Sciences  
Syracuse University/Maxwell School of Citizenship and Public Affairs

**Appendix 6:  
Survey Questions Organized by Relevant  
Criteria, Measure or Sub-Measure**

Analysis of Survey questions

**I. Access:**

**A. Questions used to calculate average Likert Scale scores:**

(1) Overall Access:

Q.5D: AGENCY or APPLICANT provided clear, complete information about the project and its effects.

Q.5E: Public meetings were scheduled at convenient times.

Q.5I: Public meetings were held at paces that were convenient to me.

Q.5L: I was able to get access to information about the project in a timely way.

(2) Accessible information:

Q.5D: AGENCY or APPLICANT provided clear, complete information about the project and its effects.

Q.5L: I was able to get access to information about the project in a timely way.

(3) Accessible meetings

Q.5E: Public meetings were scheduled at convenient times.

Q.5I: Public meetings were held at paces that were convenient to me.

**B. Additional questions used for qualitative review:**

Q.1: How did you learn about PROJECT NAME?

Q.3: I took part in the public review of PROJECT NAME by (please check all that apply):

- Attending a public meeting sponsored by the PERMITTING AGENCY \_\_\_\_\_
- Attending a public meeting sponsored by APPLICANT \_\_\_\_\_
- Speaking at a public meeting sponsored by the PERMITTING AGENCY \_\_\_\_\_
- Speaking at a public meeting sponsored by APPLICANT \_\_\_\_\_
- Writing to AGENCY or APPLICANT \_\_\_\_\_
- Talking to AGENCY or APPLICANT staff outside public meetings \_\_\_\_\_
- Attending community meetings not organized by AGENCY or APPLICANT \_\_\_\_\_
- Organizing other community members to participate \_\_\_\_\_
- Attending a protest about the project \_\_\_\_\_
- Organizing a protest about the project \_\_\_\_\_
- Other (Please describe: \_\_\_\_\_) \_\_\_\_\_

Q.4: Why did you decide to participate in the public review of the PROJECT NAME?

Q.6: Before participating in this public review for this project, did you participate in other AGENCY public review processes?

Yes: \_\_\_\_\_ Approximately how many? \_\_\_\_\_  
 No: \_\_\_\_\_

Q.10: Do you think the public participation process could be made more effective?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*(Changes related to access were considered as part of the analysis of this criterion.)*

Q.11 Why did you decide **NOT** to participate in the public review of [project]? (Please check all that apply.) *[The following responses were considered as part of the analysis of this criterion:]*

I didn't know enough about the project or its effects to participate. \_\_\_\_\_  
 Public meetings or hearings were scheduled at inconvenient times. \_\_\_\_\_  
 Public meetings or hearings were scheduled at inconvenient locations. \_\_\_\_\_  
 I didn't have enough information about public meetings, hearings or other participation opportunities. \_\_\_\_\_  
 Others in the community were representing my views as well as I could. \_\_\_\_\_

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future? \_\_\_\_\_

---

*[Any proposed changes related to access were considered as part of this criterion.]*

## **II. FAIR PROCESS:**

### **A. Questions used to calculate average Likert scores:**

#### **(1) Overall fair process:**

Q.5.C: DEC was most concerned about meeting applicant's needs.

Q.13D: [Agency] wouldn't approve a project that could hurt people or the environment.

Q.13F: [Agency] treats individuals and businesses with the same respect.

Q.13G: Government agency staff are generally well-trained and knowledgeable in their fields.

Q.13H: [Agency] staff are generally knowledgeable and well-trained.

Q.13I: [Agency] staff tend to favor business interests over the public interest.

Q.13L: [Agency] bases its decisions on good science.

Q.7: Compared to the other public review process in which you've participated, how responsive was this process to public comments?

(2) Unbiased Decision-Maker

Q5.C: DEC was most concerned about meeting applicant's needs.

Q.13F: [Agency] treats individuals and businesses with the same respect.

Q.13I: [Agency] staff tend to favor business interests over the public interest.

(3) Competent Decision-Maker

Q.13D: [Agency] wouldn't approve a project that could hurt people or the environment.

Q.13G: Government agency staff are generally well-trained and knowledgeable in their fields.

Q.13H: [Agency] staff are generally knowledgeable and well-trained.

Q.13L: [Agency] bases its decisions on good science.

(4) Consistent Process:

Q.7: Compared to the other public review process in which you've participated, how responsive was this process to public comments?

**B. Additional questions used for qualitative review:**

Q.10: Do you think the public participation process could be made more effective?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*[Any suggested changes related to fair process were considered as part of this criterion.]*

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future?

*[Any suggested changes related to fair process were considered as part of this criterion.]*

**III. VOICE****A. Questions used to calculate average Likert scores:**(1) Perception of influence:

Q.5A: AGENCY staff listened to and considered my concerns about the project

Q.5B: The decision about the project was made before the public got involved

Q.5F: Public comments significantly influenced the final decision.

Q.5G: Participating in this process was a waste of my time.

Q.5H: Public comments significantly influenced the analysis done.

Q.5J: AGENCY didn't listen to public concerns.

**B. Additional questions used for qualitative review:**

Q.10: Do you think the public participation process could be made more effective?  
 Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*[Any suggested changes related to voice were considered as part of this criterion.]*

Q.11: Why did you decide **NOT** to participate in the public review of [project]? (Please check all that apply.) *[The following response was considered as part of the analysis of this criterion:]*

My participation wouldn't make any difference in the result. \_\_\_\_\_

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future?

*[Any suggested changes related to fair process were considered as part of this criterion.]*

**IV. DELIBERATIVE DIALOGUE****A. Questions used to calculate average Likert scores:**

(1) Generally:

Q.5K: Agency or applicant] fully answered my questions about the project.

Q.13L: [Agency] bases its decisions on good science.

Q.5O: [Agency] bases its decisions on good science.

**B. Additional questions used for qualitative review:**

Q.10: Do you think the public participation process could be made more effective?  
 Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*[Any suggested changes related to dialogue were considered as part of this criterion.]*

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future?

*[Any suggested changes related to dialogue were considered as part of this criterion.]*

**V. RECOGNITION****A. Questions used to calculate average Likert scores:****SOCIAL RECOGNITION**

(1) Generally/Respect for Individuals:

Q.13E: Most government agency staff are courteous and respectful to the public.

Q.13K:[Agency] staff are generally courteous and respectful to the public.

### INSTITUTIONAL RECOGNITION

(1) Generally:

Q.13B:[Agency's] procedures and practices respect the rights of the community.

Q: 13J:[Agency] staff would prefer not to deal with public concerns.

Q.5A: [Agency] staff listened to and considered my concerns about the project

Q.5J: [Agency] didn't listen to public concerns.

(2) Respect for Communities:

Q.13B:[Agency's] procedures and practices respect the rights of the community.

(3) Accommodation of Community Concerns:

Q: 13J:[Agency] staff would prefer not to deal with public concerns.

Q.5A: [Agency] staff listened to and considered my concerns about the project

Q.5J: [Agency] didn't listen to public concerns.

### **B. Additional questions used for qualitative review:**

Q.10: Do you think the public participation process could be made more effective?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*[Any suggested changes related to recognition were considered as part of this criterion.]*

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future?

*[Any suggested changes related to recognition were considered as part of this criterion.]*

## **VI. LEGITIMACY**

### **A. Questions used to calculate average Likert scores:**

(1) Generally:

Q.5M: The final decision on this project was reasonable based on the facts.

Q.5N: The review process was fair.

Q.8: Overall, how satisfied were you with the public review for the [NAME] project?

Q.9: Given this experience, how likely are you to participate in the public review of other potentially harmful projects proposed for your community?

Q.13A: Most government agency can be trusted to do the right thing.

Q.13C: Most government agency can be trusted to do the right thing.

Q.13D: AGENCY wouldn't approve a project that could hurt people or the environment.

(2) Process satisfaction:

Q.5N: The review process was fair.

Q.8: Overall, how satisfied were you with the public review for the [NAME] project?

Q.9: Given this experience, how likely are you to participate in the public review of other potentially harmful projects proposed for your community?

(3) Decision satisfaction:

Q.5M: The final decision on this project was reasonable based on the facts.

(4) Trust in government:

Q.13A: Most government agency can be trusted to do the right thing.

Q.13C: Most government agency can be trusted to do the right thing.

Q.13D: AGENCY wouldn't approve a project that could hurt people or the environment.

**B. Additional questions used for qualitative review:**

Q.10: Do you think the public participation process could be made more effective?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, what changes would you suggest?

---

*[The number and significance of any suggested changes were considered as part of this criterion.]*

Q.12: What changes, if any, to the public participation process would make it more likely that you would participate in the future? *[The number and significance of any suggested changes were considered as part of this criterion.]*

Q.11: Why did you decide **NOT** to participate in the public review of the PROJECT NAME? (Please check all that apply.)

The AGENCY can be trusted to do the right thing without my participation. \_\_\_\_\_  
(Considered as part of trust in government.)

(15) Please indicate how often you have done the following over the past 12 months (list of civic participation activities):

(16) Have you become more involved or less involved in political activities like those in Question 15 since public review of the PROJECT NAME began in YEAR?

More involved \_\_\_\_\_ Less involved \_\_\_\_\_ About the same \_\_\_\_\_ Don't know \_\_\_\_\_

(17) With which community organization(s) are you regularly involved now (please check all that apply): (list of groups with which participants may be involved)

(18) With which community organization(s) were you regularly involved in 2008 (please check all that apply): (same list of groups with which participations may be involved)

*[Questions 15 - 18 were reviewed for changes in involvement over time as part of analysis of the legitimacy criterion.]*

**APPENDIX 7:**  
**Code Book for Analysis of**  
**Situated Understanding of Effective Public Participation**

Hearing Codes:

**Historic Practices (HP):** Discussion of historic patterns of discrimination/sense of exploitation of community. Examples: We always get this” kind of language; discussion of prior environmental problems; discussion of history of community struggle

**Translating Personal Concerns (TPC):** Efforts to or failures to translate personal concerns into technical language. Examples: discussing odor issues in technical terms.

**Different Concerns (DC):** Differences between the focus of permit conditions/limits contained in regulations and public concern (i.e., quality of life vs. technical compliance). Examples: Public concerns/comments centered on quality of life, environmental sustainability, alternative technologies, etc.

**Distributional Focus (DF):** Focus on distribution of environmental hazards overall rather than specific facility: Examples: statements such as we have too much or let someone else take this one; focus on existing polluting facilities, environmental problems in the community.

**Meaningless Participation (MP):** Suggestions that participation is meaningless/issue is already decided. Example: Agency is just checking off a box; agency isn’t listening to the public; participation doesn’t change anything.

**Community Respect (CR):** Community role not respected. Examples: Community knowledge about effects project (“we know”), “We have to live with this” or “we should have control” statements; project is an insult to community

**Equitable Distribution (ED):** Equity of distribution of benefits and burdens. Example: Community doesn’t get benefits, just burdens; we take others’ garbage (pollution, etc.); imposing environmental burden on future; white (rich, more powerful) community wouldn’t have this

**Technical Inadequacy (TI):** Complaints about technical inadequacy of permit or permit review. Example: permit doesn’t meet regulations, doesn’t create enforceable requirements; review didn’t consider all impacts.

**Procedural Inadequacy (PI):** Complaints about inadequacy of the review procedure, particularly the public participation component. Examples: public didn’t get notice, public didn’t have access to information.

**Public Health (PH):** Project does not adequately protect public health (whether or not permit requirements were met). Example: permit won’t protect general health; community includes a particularly vulnerable population.

**Environmental Improvement (EI):** Positive comments about project creating environmental benefits. Example: Project will reduce emissions or pollution; project is necessary to address environmental issue

**Lack of Trust (LT):** Lack of trust in government regulator or operator. Example: statements regarding expected non-compliance, failure to enforce.

**Community Ownership (CO):** Assertion of greater community role in the decision-making process. Example: “we live here, we have to suffer the consequences.”

**Claiming Expertise (CE):** Claiming a special expertise or bolstering comments based on residence, professional training, other experiences, reliance on outside experts or technical reviews.

### Interview Codes

**Changes in process or outcome (CPO):** Effective participation linked with particular changes in the review process or decision. Additional codes in this category are: compromise (C1), application of more stringent standards (Stds); agency favored outcome (AFO) (counter)

**Agency/applicant responsive (AR):** Effective participation linked with agency responsiveness variously defined as being open to change, being truly engaged in the process, answering questions. Additional codes in this category are:

- Agency open to change (AO)
  - Not checking off box (NCB)
  - Broad or flexible agenda (FA)/Broad discussion (BD)
  - Requiring community solutions/community as sole expert (RCS) (counter)
  - Additional data review, consideration of alternatives (DRCA)
- Answers questions/respond to comments (AQ)
- Community heard (CH)

**Good process (GP):** Effective participation linked with a fair process or good process. Focuses on specific elements of good process. Includes the following more specific sub-codes:

Results-oriented:

- Full voice (FV) – participants were able to express themselves
- No steering testimony/participation (NS)
- Transparency (Trpy) – participants were able to follow process

Structure-oriented:

- Follows regulations (FR)
- Formal record (FR)
- Early participation (EP)
- Support for participants (SP)
- Direct notice or invitation (DN)

- Accessible process (AP)

**Dialogue/discussion (DD):** Effective process linked to deliberation, discussion or dialogue.

**Range of community voices included (RV):** Effective participation linked to whether a range of voices from the community were heard. Additional codes in this category are: wide/broad outreach (WO) and number of participants (NP)

**Equitable Results and/or Process (ERP):** Effective participation linked to whether the final outcome or the process is equitable in terms of the ways that communities of color, low-income communities, overburdened communities or politically disenfranchised communities are treated.

**Community Control (CC):** Effective participation linked to the degree of control or influence that community has on the outcome. Additional codes in this category are: Community Influence (CI), role in decision (RD), negotiated criteria for decision (NC)

**Balance of Power (BP) =** Effective participation linked to a balance of power between applicant/community or agency/community. Additional codes in this category are: leverage/external power (LEP), allies at the table (AT), access to decision-makers (ADM)

**Respect for Community Expertise (RCE):** Effective participation linked to respect for the community's knowledge of and expertise about its own health, historic effects, current conditions, etc. Additional codes in this category are: applicant/agency hostility to community/lack of respect (LR).

**Respect for Process (RFP):** Effective participation linked to following set process, respect for set process. Additional codes in this category are: on-point discussions/respect for the agenda (RFA) and limited conflict (LC).

**Informed and Educated Participants (IEP):** Effective participation linked to the presence of informed and educated participants, whether they enter the process that way or are educated through the process. Additional codes in this category are: technical nature of the issues (TN)

**Translating Personal Concerns (TPC):** Effective participation requires participants to speak the language of technocrats/bureaucrats, requires translation of personal concerns into terms that resonate in the established process. Additional codes in this category are separating illegitimate concerns (SIC).

**Sense of Futility (SF):** past participation linked with sense of futility for various reasons. Additional related codes are: Agency bias toward single solution (AB); no community influence/agency not listening (NI); participation after decision made (LP); lack of trust in agency (LT); agency consistently unresponsive (AU).

**Resistant Agency/Applicant (RA):** Lack of effective participation linked to the presence of a resistant agency or applicant. Additional codes in this category are: limited public role (LPR), agency or applicant reliance on technical issues or bureaucratic language to exclude (AC, BS).

**Repeat Players (RP):** Effective participation tied to the presence of repeat players. Often comments had negative connotation from participants (as in agency only wants to deal with repeat players).

**Limited Regulatory Scope (LRS):** Effective participation blocked by limited regulatory scope of review. Additional codes in this category are: limited agenda for discussion (LA), focus on operational limits or compliance with regulatory standards only (OLO, Stds), limited geographic scope of review (LGS).

**Differing Expectations (DE):** Effective participation blocked by differing expectations of community and applicant or agency, particularly with respect to the appropriate role of participants.

**Coopted representatives (CR):** Effective participation blocked by the cooptation of community representatives, either elected officials or community organizations.

**Community voice (CV):** Effective participation linked to community being allowed to speak for itself, rather than agency speaking for the community.

**Community Empowerment Beyond Process (CEm):** Effective participation linked to community learning to advocate for itself in other settings or future processes, developing community organizations, etc.

**Legitimizing Agency Decision (LD):** Participation linked to legitimizing agency decision. Not always intended as a positive comment (that is, participation can legitimize illegitimate decisions).

**Increase Community Understanding of the System (IUS):** Participation is important because it increases community understanding of the system, helps community members make decisions about where and how to participate.

**Building Relationship with the Agency (BR):** Effective participation builds a relationship between community members and the regulatory agency staff, which may be beneficial in future processes.

**Formal Protest (FP):** Participation is valuable because it is required before more formal protests can be lodged (administrative appeals, judicial proceedings).

**Information to Community (IC):** Effective participation provides information to communities about the projects that may affect them.

**APPENDIX 8:  
Code Book for Comparative Case Study**

Interview/Document Codes:

**(1) Access:**

**Notice:** all references to notice of project and/or participation opportunities. Includes sub-codes to indicate the source of notice (direct, incidental, community-driven, standard) and characterization of notice (adequate, positive, negative).

**Times/Places:** all references to accessible times/places for meetings.

**Accessible information:** all references to accessibility of project-related information (i.e., translated, non-technical, available in public locations). Includes sub-codes to indicate the source of information (agency, applicant, community) and a range of potential problems with information (information gap, technical inaccessibility, unreliable data); clear process references (i.e., information about process was available).

**Number of participants:** references to the total number of participants or the number of participants at a particular meeting

**Range of voices:** references to whether participation involved a range of interest, was representative of community. Includes demographic variation, variation in perspective/position or repeat players

**Procedural/structural barriers:** references to structural barriers to access, such as the complicated nature of participation process or timing issues related to public comments.

**(2) Fair Process:**

**Agency competent/agency unbiased:** references to agency being biased, incompetent, acting in bad faith, favoring industry or vice versa. Includes subcodes for bias, competence, bad faith, bad relationship with community.

**Applicant competent/applicant unbiased:** references to applicant being biased, incompetent, acting in bad faith or vice versa. Includes subcodes for bias, competence, bad faith, bad relationship with community.

**Consistent process:** references to deviations from standard review process or perception of being treated differently than other communities.

**(3) Voice:**

**Full voice:** references to unlimited discussion, being able to raise all concerns. Applied to participant assessments of full voice.

**Relevant issues surfaced/Information added/investigated:** references new issues or additional information. Applied to objectively identified instances of new information/issues being added to the discussion.

**Access to decision-makers, applicant:** references to being able to access decision-makers or applicant, discussion of instances in which participants had access to decision-makers or applicants.

**Perception of influence:** references to perceived public influence over the review process and final decision or vice versa. Includes sub-code for perception that decision was made before public engagement process (statement made frequently enough to create a separate code -- **decision made**).

**System savvy:** references/statements that demonstrate participant ability to organize, gain unusual access to decision-makers, find technical assistance, or otherwise work system. Coded separately because it may help to explain perceived or actual influence.

**Changes to process/permit:** references/statements that demonstrate that agency or applicant altered the review process, investigated additional concerns or changed permit terms/project terms in response to public comments. Only changes that are within the regulatory scope or anticipated by regulations are considered in this category.

**(4) Deliberative Dialogue:**

**Dialogue:** references to perception of or actual instances of dialogue. Includes sub-codes for specific types of dialogue (**Questions answered, Concerns resolved, Scripted responses (anti)**). Also considered **shared terminology** as a potential measure of dialogue.

**Public justification:** references to arguments that can be characterized as public justifications. Includes sub-codes for **regulatory compliance** and **personal experience** as the sole justification for a particular action or position and reliance on **tech speak** or reliance on highly technical language as counter measures.

**Understanding of opposition** – references that indicate an increased or clear understanding of opposing perspective, rationale.

**(5) Recognition:**

**(A) Social recognition:**

**Respect for individuals:** references to or examples of overtly respectful treatment of individual community participants, such as agency listening carefully to participants, taking notes, using title or honorifics. Countered by evidence of dismissiveness based on social identity (i.e., hysterical housewives).

**Welcoming individuals:** references to or examples of efforts to welcome individuals into the existing process. Examples within this category include adding individuals to mailing lists, direct outreach to individuals, provision of translation services.

(B) **Institutional recognition:**

**Respect for the community:** references to or examples of respectful treatment of “the community” as a whole. Examples include direct notice or outreach to community-based organizations, expanded role for community leaders, community-specific notice and outreach. Includes sub-code for **community-developed terminology** adopted by the agency or applicant.

**Accommodation of community concerns:** references to or examples of changes to the review process, the project analysis, the explanations provided for specific actions or the project itself in response to community-specific concerns. In particular, focus is on changes that are not typical or already contemplated by the regulations or that could not be required under applicable regulations. Includes sub-codes for **community driven analysis** (add'l studies triggered by community); **expanded scope of review** (consideration of community issues outside normal scope); **engaged explanations** (detailed and tailored explanation of decisions, meaningful response to questions) and **changes to process/permit outside scope** (changes to process/permit that reflect community concerns and go beyond the typical scope of change contemplated by applicable regulations). Also includes specific counter-measures including **reliance on record, reliance on regulatory compliance, reliance on reassurances/platitudes** (rejection of community concerns on these grounds without engagement on the details), or invocation of **narrow review scope** (procedurally defined limits to discussion).

(6) **Legitimacy:**

**Process satisfaction:** references to or examples of participant satisfaction with the review process. Includes sub-codes for **self-reported satisfaction** and **future participation** (willingness to participate in similar processes in the future). Countered by statements regarding **need for change** (perception that changes to the process are necessary for effective participation) and **participation irrelevant** (reported perception that decision was made before public participation offered or that public participants could not affect process or outcome).

**Decision satisfaction:** references to or examples of participant satisfaction with the final decision. Includes sub-codes for **self-reported satisfaction** (with the final result in whole or in part). Countered by **continuing complaints; willingness to appeal/protest** (as expressed by the participant); and **appeal/Protest** (actual appeal of decision/on-going protests).

**Trust in government:** references to or examples of participant trust in government to “do the right thing” or protect the public interest. Includes sub-codes for **agency as public protector** and **community participation** (comparison of pre- and post-levels of civic engagement and community involvement).

**APPENDIX 9:**  
**Document Index for Comparative Case Studies**

**SUMMARY OF DOCUMENTS AND INTERVIEWS**

<b>Case</b>	<b>Code</b>	<b>Name</b>	<b>Doc Type</b>	<b>Author</b>	<b>Source</b>
EC1	EC1D1	Media coverage No. 1	Newspaper article	Unknown	Interviewee
EC1	EC1D2	Handout, Proposed transfer station	Agency handout (?)	Unknown	Interviewee
EC1	EC1D3	Community Board Meeting Notes	Meeting minutes	Unknown	Interviewee
EC1	EC1D4	Organizing/Outreach Notes	Organizing tool (?)	Unknown	Interviewee
EC1	EC1D5	Organizing/Outreach Notes	Organizing tool (?)	Unknown	Interviewee
EC1	EC1D6	Media coverage No. 2	Newspaper article	Unknown	Interviewee
EC1	EC1D7	Community Board, Community News	CB Newsletter	Unknown	Interviewee
EC1	EC1D8	Flyer advertising City hearing	Flyer, Invitation	CB 11	Interviewee
EC1	EC1D9	Media coverage No. 3	Newspaper article	Unknown	Interviewee
EC1	EC1D10	Letter to City Planning Board	Letter	Citizen	Interviewee
EC1	EC1D11	Stakeholder List	List of Stakeholders	Applicant	FOIL
EC1	EC1D12	NOCA Postcard Mailing List	Mailing List	Applicant	FOIL
EC1	EC1D13	Cover Letter for Report on Public Participation Plan (PPP) Completion	Letter	Applicant	FOIL
EC1	EC1D14	Report on PPP Completion	Report	Applicant	FOIL
EC1	EC1D15	Appendix 1 to Report on PPP Completion	Report	Applicant	FOIL
EC1	EC1D16	Appendix 2 to Report on PPP Completion	Report	Applicant	FOIL
EC1	EC1D17	Appendices 3 - 6 to Report on PPP Completion	Report	Applicant	FOIL
EC1		Appendix 6A to Report on PPP Completion (EJ Meeting Transcript)	Transcript	Applicant	FOIL

EC1		Appendix 6B to Report on PPP Completion (EJ Mtg Transcript Part 2)	Transcript	Applicant	FOIL
EC1	EC1D20	Appendices 7 - 12 to Report on PPP Completion (Response to comments, notice info)	Report	Applicant	FOIL
EC1	EC1D21	Cover for Permit Application	Permit Application	Applicant	FOIL
EC1	EC1D22	Table of Contents for Permit Application	Permit Application	Applicant	FOIL
EC1	EC1D23	Joint Applications with Attachments	Permit Application	Applicant	FOIL
EC1	EC1D24	Permit Application Section 1	Permit Application	Applicant	FOIL
EC1	EC1D25	Permit Application Section 2	Permit Application	Applicant	FOIL
EC1	EC1D26	Permit Application Section 3	Permit Application	Applicant	FOIL
EC1	EC1D27	Permit Application Section 4	Permit Application	Applicant	FOIL
EC1	EC1D28	Permit Application Section 4.5	Permit Application	Applicant	FOIL
EC1	EC1D29	Permit Application Section 5	Permit Application	Applicant	FOIL
EC1	EC1D30	Permit Application Section 4.4 (Related project)	Permit Application	Applicant	FOIL
EC1	EC1D31	Letter re: Revisions to Permit Applications (2005)	Letter	Applicant	FOIL
EC1	EC1D32	Letter transmitting public comments to applicant	Letter (public comments)	DEC (citizens)	FOIL
EC1	EC1D33	Letters to DEC (public comments)	Letters	Citizens	FOIL
EC1	EC1D34	Response to Notice of Incomplete Application	Permit Application; Letter	Applicant	FOIL
EC1	EC1D35	Comment Letters No. 1	Comment letters	Citizens	FOIL
EC1	EC1D36	Notice of Issues Conference	Letter	DEC/Office of Hearings	FOIL
EC1	EC1D37	Comment Letters No. 2	Letter	Citizen	FOIL

EC1	EC1D38	Community Advisory Group ("CAG")	List	Unknown	FOIL
EC1	EC1D39	CAG Mission Statement	Mission Statement	Unknown	FOIL
EC1	EC1D40	Submission to ALJ	Pleading	Citizens	FOIL
EC1	EC1D41	Comment Letters No. 3	Letter	Citizen	FOIL
EC1	EC1D42	Comment letters No. 4	Letters	Citizens	FOIL
EC1	EC1D43	Comment letters No. 5	Letters	Citizens	FOIL
EC1	EC1D44	Comment letters No. 6	Letters	Citizens	FOIL
EC1	EC1D45	Comment letters No. 7	Letters/Testimony	Citizens	FOIL
EC1	EC1D46	Mailing List (initial)	List	DEC	FOIL
EC1	EC1D47	Draft Notice of Legislative Hearing	Notice	DEC	FOIL
EC1	EC1D48	Draft Permit	Permit	DEC	FOIL
EC1	EC1D49	E-mail re: Notice of Complete Application corrections	E-mail	Applicant	FOIL
EC1	EC1D50	Media coverage No. 4	Newspaper article	Media	FOIL
EC1	EC1D51	Draft Public Participation Plan	Public Participation Plan	Applicant	FOIL
EC1	EC1D52	Comment Letters No. 8	Letter	Citizen	FOIL
EC1	EC1D53	Generic Draft Public Participation Plan	Public Participation Plan	Applicant	FOIL
EC1	EC1D54	Written Comments submitted at Legislative Hearing	Comments and/or testimony	Various	FOIL
EC1	EC1D55	Written Comments submitted at Legislative Hearing II	Comments and/or testimony	Various	FOIL
EC1	EC1D56	Written Comments submitted at legislative	Comments and/or	Various	FOIL

		hearing III	testimony		
EC1	EC1D57	Notice of Legislative Hearing	Letter	DEC	FOIL
EC1	EC1D58	Draft PPP App. C	Public Participation Plan	Applicant	FOIL
EC1	EC1D59	Media coverage No. 5	Newspaper article	Media	FOIL
EC1	EC1D60	Various articles on facility plus cover letter	Newspaper articles	Various	FOIL
EC1	EC1D61	Comment Letters No. 9	Letters	Various	FOIL
EC1	EC1D62	Public Notice of Complete Application	Notice Document	DEC	FOIL
EC1	EC1D63	E-mail re: proposed permit changes in response to public comments	E-mail from applicant to DEC	Applicant	FOIL
EC1	EC1D64	Comment Letters No. 10	Letter	Citizen	FOIL
EC1	EC1D65	Comment Letters No. 11	Letters	Various	FOIL
EC1	EC1D66	Media and Comment Letters No. 12	Letters/Media	Various	FOIL
EC1	EC1D67	Transcript of EJ Meeting	Transcript	Applicant	FOIL
EC1	EC1D68	Meeting Notice (Community)	Flyer	Anti-Waste Task Force	Interviewee
EC1	EC1D70	Legislative Hearing I Transcript	Transcript	Various	FOIL
EC1	EC1D71	Legislative Hearing II Transcript	Transcript	Various	FOIL
EC1	EC1D72	Interview Transcript, EC1A11	Interview Transcript	EC1A11	Research generated
EC1	EC1D73	Interview Transcript, EC1I2	Interview Transcript	EC1I2	Research generated
EC1	EC1D74	Interview Transcript, EC1I3	Interview Transcript	EC1I3	Research generated
EC1	EC1D74	Interview Transcript, EC1I4	Interview Transcript	EC1I4	Research generated

EC1	EC1D75	Interview Transcript, EC1I5	Interview Transcript	EC1I5	Research generated
EC1	EC1D76	Interview Transcript, EC1I6	Interview Transcript	EC1I6	Research generated
EC1	EC1D77	Interview Transcript, EC1I7	Interview Transcript	EC1I7	Research generated
EC1	EC1D78	Interview Transcript, EC1I8	Interview Transcript	EC1I8	Research generated
CC1	CC1D1	Resolution Number 08-116	Council resolution	Local government	FOIL
CC1	CC1D2	Permit Approval Letter, DEP to public	Letter	DEP	FOIL
CC1	CC1D3	Amended Operations and Maintenance Manual	Permit Document	Applicant	FOIL
CC1	CC1D4	Final Permit transmittal letter	Letter	DEP	FOIL
CC1	CC1D5	Sound Level Measurement Survey	Report	Applicant	FOIL
CC1	CC1D6	Response to Public Comment	Letter/Summary Report	DEP	FOIL
CC1	CC1D7	Draft Permit (and transmittal letter)	Draft permit/letter	DEP	FOIL
CC1	CC1D8	Final Permit	Final permit	DEP	FOIL
CC1	CC1D9	Media coverage 1	Newspaper article	Media	Interviewee
CC1	CC1D10	Media coverage 2	Newspaper article	Media	Interviewee
CC1	CC1D11	Media coverage 3	Newspaper article	Media	Interviewee
CC1	CC1D12	Media coverage 4	Newspaper article	Media	Interviewee
CC1	CC1D13	Media coverage 5	Newspaper article	Media	Interviewee
CC1	CC1D14	Media coverage 6	Newspaper article	Media	Interviewee
CC1	CC1D15	Media coverage 7	Newspaper article	Media	Interviewee
CC1	CC1D16	Media coverage 8	Newspaper article	Media	Interviewee
CC1	CC1D17	Media coverage 9	Newspaper article	Media	Interviewee
CC1	CC1D18	Media coverage 10	Newspaper article	Media	Interviewee

CC1	CC1D19	Letter re: County Waste Mgmt Plan	Letter	DEP	FOIL
CC1	CC1D20	E-mail re: traffic study	E-mail	Applicant consultant	FOIL
CC1	CC1D21	Cover sheet for Noise Report/traffic study	Letter	Applicant consultant	FOIL
CC1	CC1D22	Environmental and Health Statement	Report	Applicant consultant	FOIL
CC1	CC1D23	Modified Final Permit	Permit Document	DEP	FOIL
CC1	CC1D24	Hearing Notices	Newspaper notices	Applicant	FOIL
CC1	CC1D25	Hearing Transcript	Transcript	DEP	FOIL
CC1	CC1D26	Host Community Benefit Agreement	Contract	Applicant/local government	FOIL
CC1	CC1D27	Letter re: HCBA	Letter	Local government	FOIL
CC1	CC1D28	First Modified Permit	Permit Document	DEP	FOIL
CC1	CC1D29	Response to First Notice of Technical Deficiency	Letter	Applicant	FOIL
CC1	CC1D30	Letter to DEP from Borough of Lodi	Letter	Local government	FOIL
CC1	CC1D31	List of Meeting Attendees (Permit Discussion)	List	DEP	FOIL
CC1	CC1D32	Operations and Maintenance Manual	Permit Document	Applicant	FOIL
CC1	CC1D33	Letter to DEP from Citizen	Letter	Citizen	FOIL
CC1	CC1D34	Letter re: Proposed Revisions to O & M	Letter/revised permit document	Applicant	FOIL
CC1	CC1D35	E-mail re: traffic study	E-mail	Applicant and DEP	FOIL
CC1	CC1D36	Modified Final Permit	Permit Document	DEP	FOIL
CC1	CC1D37	Petition Against Permit Modification	Petition	Citizens	FOIL
CC1	CC1D38	Letter re: Supplemental Information	Letter	Applicant	FOIL

CC1	CC1D39	Letter re: Public Hearing Questions	Letter	DEP	FOIL
CC1	CC1D40	Letter re: Answers to Public Hearing Questions	Letter	Applicant	FOIL
CC1	CC1D41	Letter requesting comment	Letter	Applicant	FOIL
CC1	CC1D42	First Letter re: Answers to Public Hearing Questions	Letter	Applicant	FOIL
CC1	CC1D43	Traffic and Transportation Study	Report	Applicant consultant	FOIL
CC1	CC1D44	Interview Transcript, CC1I1	Interview Transcript	CC1I1	Research generated
CC1	CC1D45	Interview Transcript CC1I2	Interview Transcript	CC1I2	Research generated
CC1	CC1D46	Interview Transcript, CC1I4	Interview Transcript	CC1I4	Research generated
CC1	CC1D47	Interview Transcript, CC1I5	Interview Transcript	CC1I5	Research generated
CC1	CC1D48	Interview Transcript, CC1I3	Interview Transcript	CC1I5	Research generated
CC1	CC1D49	Interview Transcript, CC1IA6	Interview Transcript	CC1IA6	Research generated
EC2	EC2D1	Applicant's Project Press release	Press release	Applicant	FOIL?
EC2	EC2D2	Public Information Meeting Presentation	Power Point slides	Applicant	FOIL?
EC2	EC2D3	Progress Report #1	Progress Report to DEC	Applicant	FOIL?
EC2	EC2D4	Fact Sheet No. 1	Public outreach re: EIS	Applicant	FOIL?
EC2	EC2D5	Draft Environmental Impact Statement Scoping Meeting	Power Point slides	Applicant	FOIL?
EC2	EC2D6	Progress Report #2	Progress Report to DEC	Applicant	FOIL?
EC2	EC2D7	Updated Stakeholder List	Stakeholder List for Public Outreach	Applicant	FOIL?; website
EC2	EC2D8	Community Meeting!	Flyer/public outreach	Applicant	FOIL?

EC2	EC2D9	Information Sheet	Info Sheet/Public outreach	Applicant	FOIL?
EC2	EC2D10	Progress Report #3	Progress Report to DEC	Applicant	FOIL?
EC2	EC2D11	Updated Public Participation Plan	Report/Plan for DEC	Applicant	FOIL?
EC2	EC2D12	Final Environmental Impact Statement	Report/EIS	Applicant	FOIL?
EC2	EC2D13	Letter to DEC from Community Group consultant	Comment letter	Community consultant	FOIL?
EC2	EC2D14	Letter to DEC from DOT	Comment letter	NYS Department of Transportation	FOIL?
EC2	EC2D15	E-mail to DEC from citizen	Comment letter	Citizen	FOIL?
EC2	EC2D16	Letter to DEC from Public Service Commission	Comment letter	NY Department of Public Service	FOIL?
EC2	EC2D17	Frequently Asked Questions	Info Sheet/Public outreach	Applicant	FOIL?
EC2	EC2D18	Short Environmental Assessment Form and transmittal letter	EAF Report	Applicant	FOIL; website
EC2	EC2D19	Public Meeting Summary	Report	Applicant	FOIL; website
EC2	EC2D20	Letter to Applicant from DEC re: Preliminary Draft Scoping	Comment letter on prelim draft scoping doc for EIS	DEC	FOIL
EC2	EC2D21	Draft Scope of Work for Draft EIS	Proposal to DEC	Applicant	FOIL
EC2	EC2D22	Preliminary Draft Environmental Impact Statement	Draft report	Applicant	FOIL
EC2	EC2D23	Letter to DEC re: Preliminary Draft Environmental Impact Statement	Letter	Applicant	FOIL

EC2	EC2D24	Progress Report #4	Report to DEC	Applicant	FOIL
EC2	EC2D25	Draft Environmental Impact Statement	Report to DEC	Applicant	FOIL
EC2	EC2D26	Letter to Applicant re: Draft EIS	Letter	DEC	FOIL
EC2	EC2D27	Letter to DEC re: Preliminary Draft EIS	Letter	Applicant	FOIL
EC2	EC2D28	Title V Permit Modification Application	Permit Application	Applicant	FOIL
EC2	EC2D29	E-mail to Applicant	E-mail	Applicant	FOIL
EC2	EC2D30	Air Permit Application Att A	Permit application	Applicant	FOIL
EC2	EC2D31	Letter to DEC re: Baseline Emissions	Letter	Applicant	FOIL
EC2	EC2D32	Letter to DEC re: Preliminary Draft EIS	Letter	Applicant	FOIL
EC2	EC2D33	Applicant E-mail re: Project No. 1	E-mail	Applicant	FOIL
EC2	EC2D34	Applicant E-mail re: Project No. 2	E-mail	Applicant	FOIL
EC2	EC2D35	Notice of Complete Application	Permit notice (plus cover letter)	DEC	FOIL
EC2	EC2D36	Transcript of Public Hearing	Transcript	DEC	FOIL
EC2	EC2D37	Letter from DEC to Community Organization	Letter	DEC	FOIL
EC2	EC2D38	E-mail re: Response to DEIS Comments from Applicant to DEC	E-mail	Applicant	FOIL
EC2	EC2D39	Modeled Short Term Impacts of SO2, PM10 & PM 2.5	Report	DEC	FOIL
EC2	EC2D40	E-mail re: Start Shutdown Model	E-mail	Applicant consultant	FOIL
EC2	EC2D41	Letter re: endangered species check	Letter	DEC/Division of Fish, Wildlife & Marine Resources	FOIL

EC2	EC2D42	Letter re: 45 day review by EPA	Letter	DEC	FOIL
EC2	EC2D43	Response to Public Comment	Report	DEC	FOIL
EC2	EC2D44	E-mail cover to document transmittal	E-mail	DEC	FOIL
EC2	EC2D46	Progress Report #8	Report	Applicant	FOIL
EC2	EC2D47	Letter accepting Final EIS	Letter	DEC	FOIL
EC2	EC2D48	Letter re: Action Plan for Modeled Exceedances	Letter	Applicant	FOIL
EC2	EC2D49	E-mail re: Emission Reduction Language	E-mail	Community consultant	FOIL
EC2	EC2D50	E-mail 2 re: Emission Reduction Language	E-mail	Community consultant	FOIL
EC2	EC2D51	Title V Permit and Title IV Permit	Permits	DEC	FOIL
EC2	EC2D52	Progress Report # 5	Report	Applicant	Website
EC2	EC2D53	Progress Report # 7	Report	Applicant	Website
EC2	EC2D54	Progress Report # 9	Report	Applicant	Website
EC2	EC2D55	Progress Report #10	Report	Applicant	Website
EC2	EC2D56	Progress Report #11	Report	Applicant	Website
EC2	EC2D57	Interview Transcript, EC2I1	Interview Transcript	EC2I1	Research generated
EC2	EC2D58	Interview Transcript, EC2I2	Interview Transcript	EC2I2	Research generated
EC2	EC2D59	Interview Transcript, EC2I3	Interview Transcript	EC2I3	Research generated
EC2	EC2D60	Interview Transcript, EC2IA4	Interview Transcript	EC2IA4	Research generated
EC2	EC2D61	Interview Transcript, EC2I5	Interview Transcript	EC2I5	Research generated
CC2	CC2D1	Public Hearing on Air Pollution in Community	Flyer	Community organizers	Interviewee

CC2	CC2D2	Public Interest Principles for Power Plant Siting	Policy statement	Coalition of Public Interest groups	Interviewee
CC2	CC2D3	Media coverage No. 1	Newspaper article	Community group	Interviewee
CC2	CC2D4	Media coverage No. 2	Newspaper article	Media	Interviewee
CC2	CC2D5	Captioned photos	Newspaper photos	Unknown	Interviewee
CC2	CC2D6	Notice of Hearing	Public Notice	DEC	Interviewee
CC2	CC2D7	Media coverage No. 3	Newspaper article	Media	FOIL
CC2	CC2D8	Supplemental Joint Stipulation re: Facility Siting	Settlement Document	Applicant, other parties to prior litigation	FOIL
CC2	CC2D9	Comment Letters on Modification No. 1	Letters/e-mails	Various	FOIL
CC2	CC2D10	Comment Letters on Modification No. 2	Letters/e-mails	Various	FOIL
CC2	CC2D11	Letter from Applicant to DEC re: proposed permit modifications	Letter	Applicant	FOIL
CC2	CC2D12	Letter from Applicant to DEC re: proposed permit	Letter	Applicant	FOIL
CC2	CC2D13	Correspondence re: Notice and Public Hearing	E-mails	Applicant	FOIL
CC2	CC2D14	Letter from applicant to DEC re: public concerns	Letter	Applicant	FOIL
CC2	CC2D15	Letter from applicant to DEC re: modeling	Letter	Applicant	FOIL
CC2	CC2D16	Letter from applicant to DEC re: second Draft Permit Renewal	Letter	Applicant	FOIL
CC2	CC2D17	Correspondence re: applicant comments on draft permit	E-mail	DEC	FOIL
CC2	CC2D18	Correspondence re: applicant comments on draft permit	E-mail	DEC; Applicant	FOIL
CC2	CC2D19	Letter from DEC to Applicant re: admin issues	Letter	DEC	FOIL

CC2	CC2D20	Letter requiring public hearing and notice	Letter	DEC	FOIL
CC2	CC2D21	Draft Permit Sections	Permit Document	DEC	FOIL
CC2	CC2D22	Correspondence re: need for public hearing	E-mail	Citizen	FOIL
CC2	CC2D23	Hearing Request	Agency Document	DEC	FOIL
CC2	CC2D24	Comment Letter on Modification No. 3	Letter	Community group	FOIL
CC2	CC2D25	Notice of Complete Application	Permit Document	DEC	FOIL
CC2	CC2D26	Permit Application (partial)	Permit Document	Applicant	FOIL
CC2	CC2D27	Proof of Publication for NOCA	Permit Document	Applicant	FOIL
CC2	CC2D28	Proof of Publication for Legislative Hearing	Permit Document	Applicant	FOIL
CC2	CC2D29	Transcript of Legislative Hearing	Transcript	DEC	FOIL
CC2	CC2D30	Transcript of Legislative Hearing(final page)	Transcript	DEC	FOIL
CC2	CC2D31	Written Comments for Legislative Hearing	Letters	Various (citizens)	FOIL
CC2	CC2D32	Notice of Final Permit and Response to Comments	Permit Document	DEC	FOIL
CC2	CC2D33	Changes in Final Permit	Permit Document	DEC	FOIL
CC2	CC2D34	Permit Review Report	Report	Applicant	FOIL
CC2	CC2D35	Interview Transcript, CC2I1	Interview Transcript	CC2I1	Research generated
CC2	CC2D36	Interview Transcript, CC2I2	Interview Transcript	CC2I2	Research generated
CC2	CC2D37	Interview Transcript, CC2I3	Interview Transcript	CC2I3	Research generated
CC2	CC2D38	Interview Transcript, CC2I7	Interview Transcript	CC2I7	Research generated
CC2	CC2D39	Interview Transcript, CC2I8	Interview Transcript	CC2I8	Research generated
CC2	CC2D40	Interview Transcript (Applicant representatives)	Interview Transcript	CC2IA4, CC2IA5,	Research generated

				CC2IA6	
CC2	CC2D41	Notes of Interview with CC2I9	Interview notes	CC2I9	Research generated

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**VITA**

NAME OF AUTHOR: Alma L. Lowry

PLACE OF BIRTH: Redwood Falls, MN

DATE OF BIRTH: July 1, 1965

**GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:**

Nebraska Wesleyan University, Lincoln, Nebraska

University of Michigan, Ann Arbor, Michigan

Georgetown University School of Law, Washington, D.C.

**DEGREES AWARDED:**

Master of Law (LLM), Georgetown University, 1998

Master of Science (M.S./Environmental Policy), University of Michigan, 1996

Juris Doctorate (J.D.), University of Michigan, 1995

Bachelor of Science (B.S./Mathematics), Nebraska Wesleyan University, 1987

**AWARDS AND HONORS:**

University Fellow, Syracuse University, 2007 – 2010

Order of the Coif, University of Michigan, 1995

**PROFESSIONAL EXPERIENCE:**

Teaching Fellow, Syracuse University, 2010-2011

Adjunct Professor, Hamilton College, 2005-2007

Visiting Clinical Professor, Syracuse University College of Law, 2003-2005

Graduate Fellow/Staff Attorney, Institute for Public Representation, Georgetown University College of Law, 1996-1998

Of Counsel, Law Office of Joseph P. Heath, General Counsel to the Onondaga Nation, 2011 – present.

Of Counsel, Law Office of Marc S. Gerstman, 2005 – 2007

Environmental Justice Staff Attorney, Sugar Law Center, Detroit, Michigan, 2000-2002

Staff Attorney, Prison Legal Services, Jackson, Michigan, 1999-2000

Law Clerk, Hon. Richard A. Enslin, Western District of Michigan, 1998-1999

Staff Attorney, Court of Appeals, Detroit, Michigan, 1995-1996