

## **DRAFT PROPOSED EJ TOOL RESPONSES**

DEQ's online survey is accessed here: <https://deq.nc.gov/outreach-education/environmental-justice/deq-north-carolina-community-mapping-tool/deq-north>

The first few questions ask for identifying information which is not required. Fields with asterisk (\*) are required before submittal is possible.

### **Please describe in detail how you would like this tool used?**

DEQ must use the first version of this tool with all permit applicants for the 2019 Swine General Permit, because Title VI of the Civil Rights Act of 1964 requires DEQ to ensure that its actions are not racially or ethnically discriminatory.

If a decision would have an unjustified disparate impact on the basis of race or national origin, DEQ must consider and adopt less discriminatory impacts and mitigate adverse impacts, in order to comply with Title VI of the Civil Rights Act of 1964. Ultimately, the tool should be used by DEQ in all its decision-making on permits and regulatory oversight, to ensure that DEQ is considering whether its decisions have a disproportionate impact on already overburdened communities, low-income communities and communities of color, as well as whether decisions will cause a cumulative impact.

Also, ultimately, DEQ should use the tool to identify and mitigate cumulative impacts on natural resources, since DEQ is also obligated by law to mitigate cumulative effects on, for example, water resources.

I know that the 2014 Title VI complaint filed with the EPA against DEQ by REACH, NCEJN and Waterkeeper resulted in a January 2017 letter of concern from the EPA to DEQ about the discriminatory impacts of permitted swine operations in North Carolina. The settlement agreement reached in that Title VI process requires DEQ to develop an "EJ [Environmental Justice] geographical information tool that will allow DEQ programs to conduct environmental justice analyses." By calling this a "community mapping tool," DEQ fails to be transparent about purpose, and also fails to name the problem this tool is meant to address.

I am concerned that your website says the tool's purpose is "*to provide additional layers of community information not required by statute to assist permit decision makers with respect to development and implementation of permits in North Carolina. The tool will improve the Department's ability to better ensure the fair treatment and meaningful involvement of all North Carolinians regardless of race, color, national origin, or income. The tool will help DEQ increase local public participation, and acknowledge and/or highlight the work North Carolinians are doing to address/study environmental justice across the state.*" This limited purpose fails to meet your obligations under Title VI and under the settlement agreement DEQ entered in May 2018.

The tool should be used not only for "community mapping" but also for decision-making. State screening tools can and should be incorporated in government decision-making, and there is no

need for state legislation to do so where Title VI obligates DEQ to ensure its decisions and actions are not discriminatory on the basis of race or ethnicity.

Two decades of scientific research establish that pollution from industrial hog operations in NC is linked to negative health conditions and decreased quality of life, and that the foul odors and airborne particulates from those facilities can travel three miles from the barns, lagoons, sprayfields of these permitted operations (not to mention the stench from trucks carrying live and dead hogs through our communities). The disparate impact analysis submitted to EPA with that Title VI complaint shows that blacks, Latinos and Native Americans are twice as likely as whites to live within three miles of multiple swine operations. So DEQ is violating Title VI if it permits those operations to continue having an adverse impact on surrounding residents.

The initial version of the tool should, at a minimum, identify whether any applicant for the 2019 General Permit for Swine has lagoons, barns or sprayfields within three miles of Census clusters that are majority non-white. If so, then that applicant should be required to mitigate those impacts, up to and including converting its lagoons to environmentally superior technologies that meet the 2007 statutory performance criteria.

Ultimately, the EJ tool should go beyond race to protect low-wealth residents and other vulnerable communities from the cumulative effects of multiple polluting operations located within the permit applicant's three-mile radius. With help from public health and geography experts, and using guidelines followed in states where similar tools have been developed, the next version of DEQ's EJ tool could include more health indicators and factors that may apply more broadly to other types of permitted land uses (i.e., pipelines, coal ash, landfills, compressor stations, biogas facilities). But DEQ should not wait, as it seems to be indicating it will, to develop and use an initial version of the tool for the purpose intended under the Title VI settlement (and required under Title VI).

### **What health layers do you feel are most important to include within this tool?**

\*\*You do not include in this survey any questions about what demographic data should be used. The tool should include most if not all Census data layers (race, age, housing, living arrangements, health insurance, disability, income & poverty).

The first version of this tool should also include those health indicators shown by the research to be associated with industrial animal feeding operations (respiratory illnesses, including asthma; hypertension; anemia; mood disorders (anxiety, depression). Other states use this and other health data (cardiovascular disease, low birth-weight, infant mortality) to depict the location of "sensitive populations," and so should DEQ. There is ample scientific support for the conclusion that these populations are more vulnerable to environmental pollution.

DEQ should collaborate with NC DHHS in the development of health layers and associated models/metrics.

DEQ should also consult and collaborate with NCEJN and REACH, two organizations that have been collaborating for years with public health experts and scientists, using community-based models to identify and test the very data DEQ know needs. Washington State just went through a process of outreach to EJ communities to identify what factors were important to them. The factors should be responsive to the particulars of the state, but the indicators Washington used are also important in NC: asthma, cardiovascular disease and low birthweight; low educational attainment, housing burden, transportation, linguistic isolation, poverty, race (people of color), unemployment, diesel emissions, pm2.5, ozone, toxic releases from facilities, traffic density, lead risk and exposure, wastewater discharge, proximity to hazardous waste generators and facilities, and superfund sites, and proximity to facilities with highly toxic substances. Washington is also considering additional indicators that ought to be included in the NC tool: noise pollution, surface water quality, and proximity to state specific clean up sites.

**What environmental layers do you feel are most important to include within this tool?**

All permitted operations (e.g., landfills, brownfields, Superfund sites, mining operations), operations regulated by EPA, as well as industrial poultry operations. Air quality data are important, as well as environmental exposure and effects data. It would be good to see rivers, streams, etc., but also to have links to DEQ's water and air monitoring data and data on impaired water bodies.

**How would you like to see DEQ use this mapping tool?**

I'd like to see it used to ensure DEQ does not issue permits or take any other regulatory/oversight actions where there are discriminatory or cumulative impacts.

I'd like DEQ to use this tool to comply with state and federal laws obligating the agency to mitigate discriminatory impacts on protected classes and adverse impacts on natural resources resulting from the effect of any individual permitting decision as well as the cumulative effect of DEQ's permitting decisions in that area.

Community members don't need a tool to merely confirm their lived experience; they need a tool to inform agency action to improve that experience by mitigating environmental harm. For DEQ to seek to "empower" affected communities to identify disparate impacts, yet be unwilling to take regulatory action to address those impacts would not only betray the promise the agency made to the public in 2017, but also fail to comply with civil rights law.

**Any other ideas or comments regarding the mapping tool you would like to share?**

This should NOT be called "Community Mapping Tool." You are attempting to, at best, mask and at worst, back away from the tool's purpose and DEQ's obligation under the 2018 Title VI settlement. It should be called "Environmental Justice Tool" as stated in the settlement agreement.

It is important that the tool use the right level of data wherever available and make adjustments over time in subsequent versions of the tool to include more refined data as it becomes available. Some environmental and socioeconomic data is only available at the census tract level, rather

than the more refined block group or block level, and that could cause confusion and problems in accurately evaluating effects of a regulatory decision. Census blocks should be used wherever possible and compared with block group, census tract, and zip code-level data.

DEQ should work closely with the Title VI complainants to test usability of the tool as it is being developed. I'm concerned about too much information diminishing the utility of the tool for public education/awareness. EJScreen is hard to use for this (and other) reasons. For example, users should be able to toggle on/off various indicators of interest. They should also be able to link to more information about environmental and health indicators and existing operations and impacts.

DEQ should include a ranking/scoring system that identifies relative degrees of environmental burdens, public health risks and resident vulnerability. Users of the tool should be able to know when cumulative effects and/or presence of vulnerable populations trigger mitigation requirements.

I am troubled that DEQ staff have publicly said they will not use this tool to make regulatory or permitting decisions, while also claiming that providing communities with information about "what's around them" could help those communities advocate for themselves at their local government level to prevent further siting of unwanted, polluting land uses. Our communities have already been advocating at the local, state and even federal level—for years, even decades (in the swine context). DEQ must fulfill its obligations under Title VI-- which includes denying permits and engaging in other regulatory actions to stop discriminatory impacts-- and this tool is an important step in doing that.