



Environmental Justice and Environmental Law

Tracy Hester

Environmental
Practicum
Spring 2018

Feb. 8, 2018



© 2007 Juan H. Parras t.e.j.a.s.

Cesar Chavez High School in Houston, TX

Environmental Justice - History



- Deep Roots
 - United Church of Christ *Toxic Wastes and Race in the United States* (1987); GAO studies
 - *National Law Journal* series
 - 1992 Environmental Justice Act
 - E.O. 12,898
- Initial strong legal efforts to identify enforceable EJ rights for both permitting and enforcement
- Roadblocks
 - Equal Protection and Due Process challenges: intent
 - Title VI: private right of action
 - Difficulties of proof

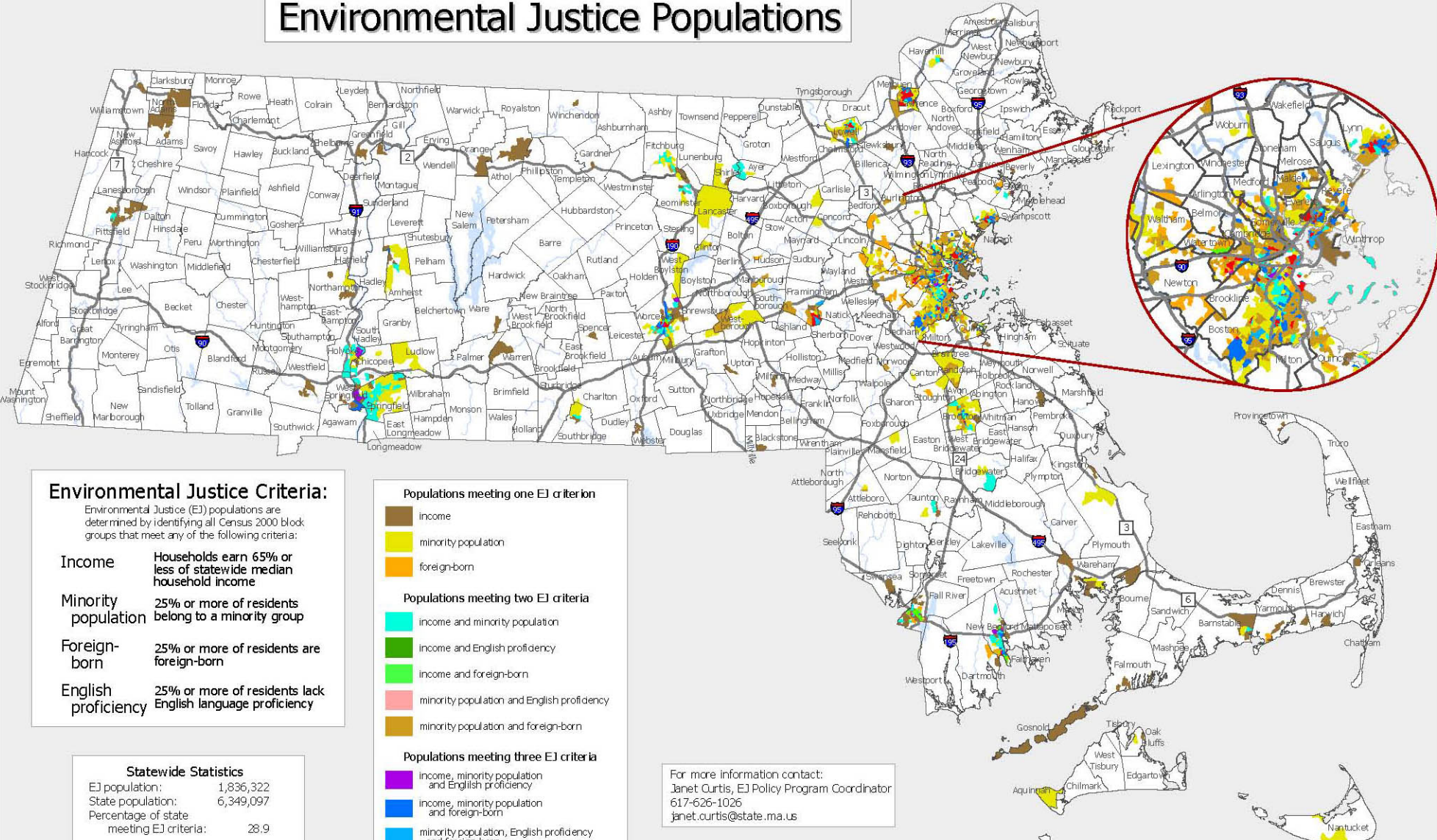
Key EJ Issues for Environmental Law



How will environmental justice concerns affect:

- Development of rules and public notice procedures
- Permits for facilities
- The decision to pursue enforcement, both civil and criminal
- Sentencing and punishment

Environmental Justice Populations



Environmental Justice Criteria:

Environmental Justice (EJ) populations are determined by identifying all Census 2000 block groups that meet any of the following criteria:

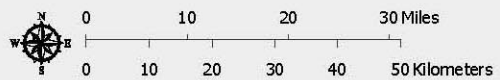
- Income** Households earn 65% or less of statewide median household income
- Minority population** 25% or more of residents belong to a minority group
- Foreign-born** 25% or more of residents are foreign-born
- English proficiency** 25% or more of residents lack English language proficiency

Statewide Statistics

| | | |
|--|-----------|-----------|
| EJ population: | 1,836,322 | |
| State population: | 6,349,097 | |
| Percentage of state meeting EJ criteria: | 28.9 | |
| | sq. miles | acres |
| EJ areas: | 387 | 247,766 |
| State area: | 8,091 | 6,349,097 |
| Percentage of state meeting EJ criteria: | 4.8 | |

- Populations meeting one EJ criterion**
 - income
 - minority population
 - foreign-born
- Populations meeting two EJ criteria**
 - income and minority population
 - income and English proficiency
 - income and foreign-born
 - minority population and English proficiency
 - minority population and foreign-born
- Populations meeting three EJ criteria**
 - income, minority population and English proficiency
 - income, minority population and foreign-born
 - minority population, English proficiency and foreign-born
 - income, English proficiency and foreign-born
- Populations meeting all four EJ criteria**
 - income, minority population, English proficiency and foreign-born

For more information contact:
 Janet Curtis, EJ Policy Program Coordinator
 617-626-1026
janet.curtis@state.ma.us



EJ and Environmental Enforcement



- History: need to process complex data to identify highest priority sites and issues
- EPA has worked hard to develop EJ Geographic Information Systems
 - Region 6 Multimedia Targeting List
 - Environmental Justice Index
 - Early stage implementation issues
 - EJSEAT



Latest Developments



- Plan EJ 2014 (legal tools) & EJ guidance on permitting
- Accelerated review and enforcement of Title VI administrative petitions
 - *Rosemere*
- Challenges to legal boundaries for remedies
 - Equal Protection limits?
 - Minimized by careful crafting of goals and targets
- State activity
 - EJ challenge to implementation of AB32

EJ – the Legal Bottom Line



- EJ has not yielded a bright legal test for either intentional discrimination or disparate impact
- It has had strong influence on EPA's (and other agencies') priorities and choices
- As a result, while not a typical legal obligation enforceable in court, you must account for it in environmental legal strategy and litigation



Questions?

Professor Tracy Hester
University of Houston Law Center

tdheste2@central.uh.edu
713-743-1152 (office)