



# Washington State Attorney General's Office

2022 ENVIRONMENTAL JUSTICE REPORT

# Letter from Attorney General Ferguson

Dear Washingtonians:

In 2020, I launched an Environmental Justice Initiative at the Attorney General's Office (AGO) to strengthen environmental policies and enforcement with meaningful involvement from the people most affected by environmental issues. Some communities, particularly low-income and Black, Indigenous, and communities of color, disproportionately bear environmental harms. Environmental harms include lack of access to heat or cooling, proximity to high pollution areas, and health impacts from environmental factors.

In 2021, the Legislature passed the Healthy Environment for All (HEAL) Act, and I committed my office to implementing this historic piece of environmental justice legislation. My office is the first and only state agency to opt-in to the HEAL Act.



Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies.”<sup>1</sup> As Dr. Robert Bullard, widely viewed as the father of environmental justice, noted: “Environmental justice is nothing more than this whole principle: people have the right to a clean, healthy, sustainable environment without regard to race, color, national origin. It’s just that simple.”<sup>2</sup>

The HEAL Act is the result of decades of hard work by community activists, organizers, individuals, and groups, particularly Black, Indigenous, and people of color, across Washington. My office is committed to implementing the provisions of the HEAL Act on the timeline set forth in the legislation, including an annual environmental justice report. This report details the actions and activities my office has taken to further environmental justice, including a snapshot of where we are in implementing the provisions of the HEAL Act.

I look forward to the continued work to achieve environmental justice for all Washingtonians.

Sincerely,

A handwritten signature in black ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Bob Ferguson  
Washington State Attorney General

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# The Healthy Environment for All (HEAL) Act

The Legislature passed the Healthy Environment for All (HEAL) Act in 2021. It is codified at RCW 70A.02 and is Washington's first state law to define environmental justice and impose requirements on state agencies to achieve environmental justice. This law is the result of decades of hard work and activism by community and Black, Indigenous, and people of color (BIPOC) individuals, organizers, and groups across Washington.

The HEAL Act seeks to address the impacts of environmental racism in Washington by reducing environmental and health disparities across the state and prioritizing overburdened communities and vulnerable populations through incorporating environmental justice principles into state agency actions. Seven state agencies are mandated by the HEAL Act to apply specific requirements into agency actions: the Washington State Departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation, as well as the Puget Sound Partnership. The HEAL Act invites all other state agencies to opt-in and implement the HEAL Act at any time; the AGO did so immediately and was the first agency to opt-in.

The HEAL Act established the Environmental Justice Council (EJ Council) to advise agencies on the integration of environmental justice into agency activities. The EJ Council consists of 16 members appointed by the governor, and is staffed by the Department of Health. Additional information on the EJ Council, including a list of members, can be found at <https://waportal.org/partners/environmental-justice-council/home>.

Agencies implementing the HEAL Act participate in the Interagency Work Group, also established by the HEAL Act. The Interagency Work Group operates in an iterative fashion with the EJ Council, providing a forum for agencies to collaborate on a coordinated approach to the deliverables of the HEAL Act with guidance from the EJ Council.

## Timeline of HEAL Act Implementation

Deadline	Deliverable	Current Status for the AGO
July 1, 2022	Community Engagement Plan	Complete - The AGO released our draft Community Engagement Plan on July 1, 2022, and will incorporate guidance and feedback from the EJ Council and community throughout Fall 2022.
September 1, 2022	Annual EJ Council Report	Complete – The AGO will release a yearly Environmental Justice Report for both the EJ Council and Washingtonians to view our progress in implementing the HEAL Act and environmental justice throughout the AGO.
January 1, 2023	Environmental Justice Implementation Plan	Ongoing – The Environmental Justice Implementation Plan will be a blueprint of how the AGO will incorporate environmental justice principles and achieve environmental justice in agency activities.
July 1, 2023	Environmental Justice Assessments on Significant Agency Actions	Not yet started.
	Publish Significant Agency Actions on Website/Notify Washington State Register of Significant Agency Actions	Not yet started.
	Environmental Justice Principles and Considerations in Financial Actions	Ongoing – Beginning conversations about how to incorporate environmental justice principles in budgeting, funding, and expenditures.
September 1, 2023	Annual EJ Council Report	Not yet started.
September 1, 2024	Annual Dashboard Report with Office of Financial Management	Not yet started.
	Annual EJ Council Report	Not yet started.
July 1, 2025	Define Additional Significant Agency Actions	Ongoing – Working collaboratively to determine agency actions that rise to the definition of “significant” under the HEAL Act.
September 1, 2025	Annual EJ Council Report	Not yet started.
No deadline	Tribal Consultation Framework	Complete – the AGO adopted our Tribal Consent and Consultation Policy in May 2019.

# Environmental Justice and the HEAL Act at the Attorney General's Office

On April 21, 2020, Attorney General Ferguson launched the AGO's Environmental Justice Initiative (EJ Initiative) to commemorate the 50<sup>th</sup> anniversary of Earth Day. The EJ Initiative included the elevation of the Counsel for Environmental Protection Unit to a permanent legal division at the AGO, renamed the Environmental Protection Division, and announced a 2021 environmental justice symposium in partnership with Gonzaga University. Attorney General Ferguson also launched a webpage tracking the Office's internal efforts to reduce environmental impacts: telecommuting, flexible work schedules, ORCA cards, PCB-free products, 100% recycled paper, paper usage, and printing volumes.

In 2021, the AGO voluntarily opted-in to the HEAL Act. As an opt-in agency, the AGO is committed to integrating environmental justice principles and practices into our agency activities and implementing the requirements of the HEAL Act to the best of our ability as a law firm. The AGO Policy Unit leads implementation of the HEAL Act. Policy Analyst Manveer Sandhu joined the AGO in September 2021, and is dedicated to implementing the HEAL Act and incorporating environmental justice across our agency to the fullest possible extent. Ellen Austin Hall, Senior Policy and External Affairs Manager, contributes to and oversees this work.

## Environmental Protection Division

Formerly the Counsel for Environmental Protection Unit, the Environmental Protection Division (EPD) is an affirmative litigation division bringing civil and criminal lawsuits to enforce environmental protection laws on behalf of Washingtonians and Washington's environment, natural resources, and human health. Since 2013, environmental crimes prosecutions have resulted in over 40 criminal convictions and almost \$5 million in fines, penalties, and restitution orders, while civil litigation targeting human health and environmental harms has resulted in over \$95 million in recoveries.

In June 2021, the EPD hired Assistant Attorney General (AAG) Jonathan Munro-Hernandez. His duties are dedicated to environmental justice work, including both affirmative litigation and advocacy. Aurora Janke, a supervising AAG within EPD, contributes to and oversees this environmental justice work. EPD's case selection criteria includes environmental justice considerations, with all of EPD's civil litigation attorneys working on cases with environmental justice components, and EPD's criminal litigation team utilizing screening and analysis tools to understand environmental justice impacts within communities related to investigations and cases.

## Tribal Consent and Consultation Policy

The AGO adopted a Tribal Consent and Consultation policy, the first policy of its kind by a Washington state agency, in May 2019. The policy requires the AGO to obtain free, prior and informed consent before initiating programs or projects that directly and tangibly affect tribes, tribal rights, tribal lands, and sacred sites. The AGO must engage in government-to-government consultation before filing civil litigation against a tribe or a business owned by a tribe in an effort to resolve a dispute, to the extent that it does not violate the Rules of Professional Conduct. The policy also requires the AGO to provide notice to tribes prior to taking actions that may directly affect tribes or tribal lands. The AGO's Tribal Consent and Consultation Policy meets the requirements of the HEAL Act, and can be found at <https://www.atg.wa.gov/tribal-consent-consultation-policy>.

## Tribal Issues

AGO Tribal Liaison Asa Washines is actively involved in the AGO's environmental justice efforts. Asa participates in regular meetings of the tribal liaisons from the agencies implementing the HEAL Act. The tribal liaisons are developing a tribal engagement plan for HEAL Act agencies to use when engaging with tribal communities outside of the formal government-to-government consultation structure. Asa and Manveer participated in a tribal briefing on the HEAL Act convened by the Department of Health on August 11, 2022.

## **Outreach and Engagement**

AGO staff across multiple divisions engage in ongoing outreach to community groups focused on environmental and environmental justice issues. Staff are in regular contact with groups and individuals working on environmental justice issues within their communities, and have given several presentations to interested organizations and at community meetings about the AGO's implementation of environmental justice and the HEAL Act. The outreach and engagement work will continue to expand throughout the next year and beyond. The AGO will use our Environmental Justice Community Engagement Plan as guidance for conducting outreach and engagement on environmental justice issues after it has been updated.

## **Community Engagement Plan**

On July 1, 2022, the AGO released a draft community engagement plan, according to the requirements of the HEAL Act. This community engagement plan will be updated with guidance from the EJ Council, feedback from the community, and consultation with tribes. It outlines different elements of meaningful community engagement that AGO staff will use when conducting outreach, including: identifying and prioritizing overburdened communities; best practices to overcome barriers to engagement with overburdened communities and vulnerable populations; use of special screening tools to evaluate and understand the nature and needs of particular communities; facilitating and supporting inclusion of community members affected by agency actions; and methods for outreach and communication using language access practices and policies. The AGO's draft Environmental Justice Community Engagement Plan can be found at <https://agportal-s3bucket.s3.amazonaws.com/AGO%20EJ%20Community%20Engagement%20Plan%207.1.2022.pdf>.

## **Additional Environmental Justice Activities at the Attorney General's Office**

Staff in many divisions across the AGO work on environmental justice issues, such as providing counsel to the HEAL Act mandated agencies, pursuing affirmative litigation, coordinating and consulting with tribes, and working on policy and legislative solutions. The AGO convenes a monthly internal workgroup, consisting of AAGs from both client-advice and affirmative litigation divisions, the AGO's tribal liaison, and policy staff, to collaborate on the implementation of the HEAL Act, incorporation of environmental justice in agency actions, and other environmental justice matters that pertain to our office.

# Actions to Further Environmental Justice

Since 2020, the AGO has taken a number of actions to further environmental justice within our agency and across Washington.

2020

April

## Earth Day 2020

On the 50<sup>th</sup> anniversary of Earth Day, Attorney General Ferguson announced the AGO's Environmental Justice Initiative, including elevation of the Counsel for Environmental Protection Unit to a permanent legal division, the Environmental Protection Division, and an environmental justice symposium in partnership with Gonzaga University.

May

## Federal Emission Standards SAFE Rule

Attorney General Ferguson joined 27 other states and municipalities in a lawsuit against the United States Environmental Protection Agency's (EPA) decision to loosen federal emission standards for cars and light-duty trucks. The Trump administration's "Safer Affordable Fuel-Efficient Vehicles (SAFE) Rule" reduced emission standards which would increase air pollution, cause more deaths related to air pollution, and increase consumer costs for cars with reduced fuel efficiency. Attorney General Ferguson asserted that these new rules violated the Clean Air Act, the Energy Policy & Conservation Act, and the Administrative Procedure Act.<sup>3</sup> This litigation is ongoing.

June

## Monsanto Water Pollution Lawsuit

Attorney General Ferguson announced that Monsanto Company, an agrochemical and agricultural biotechnology corporation, would pay \$95 million to avoid trial in the state's lawsuit for the manufacturing, marketing, and distribution of polychlorinated biphenyls (PCBs). PCBs were banned in 1977 for their harm to human and environmental health. Contamination from Monsanto's products and applications containing PCBs had been found across Washington in bays, rivers, streams, sediments, soil, and air, causing ongoing harm to Washingtonians and the environment. In 2016, Washington became the first state to sue Monsanto over PCBs. Attorney General Ferguson directed \$60.7 million to the General Fund, and implored the Legislature to invest the resources in the health of Washington waterways and marine species. The Legislature made this investment. The remaining funds went towards continued environmental enforcement, reimbursement of the costs of investigating and preparing for trial, and payment to the outside law firms who assisted the AGO in shouldering costs and work of the case.<sup>4</sup>

Aug.

## Liquefied Natural Gas Railcar Transportation

Attorney General Ferguson partnered with 14 state attorneys general, led by New York and Maryland, to challenge a Trump administration rule allowing transportation of liquefied natural gas in rail tank cars across the nation. This rule increases the risk of catastrophic rail accidents and greenhouse gas emissions, jeopardizing public health and safety.<sup>5</sup> This litigation is ongoing.

## Protecting NEPA

Attorney General Ferguson and former California Attorney General Xavier Becerra co-led a coalition of 27 states, commonwealths, territories, counties, and cities in a lawsuit against the Trump administration's Council on Environmental Quality (CEQ) for changes to the National Environmental Policy Act (NEPA) regulations that eliminate or reduce environmental scrutiny for a range of major federal decisions and negatively impact communities most susceptible to environmental harms. The changes limit the types of federal actions requiring agency review of environmental effects, restrict the scope of environmental reviews, diminish public participation, and seek to block judicial review of agency actions violating NEPA.<sup>6</sup> CEQ is in the process of repealing and replacing those changes; until that is complete, this litigation is ongoing.

2021

Jan.

### **Blocking the Trump Administration’s “Dirty Power Plan”**

Attorney General Ferguson and a coalition of 22 states and seven local governments challenged the Trump administration’s decision to repeal the Clean Power Plan and replace it with a “dirty power plan.”<sup>7</sup> In January 2021, a federal appellate court blocked the Trump administration’s effort to repeal the Clean Power Plan and replace it with a rule that would not require significant carbon emission reductions, dubbed the Affordable Clean Energy (ACE) rule. The EPA adopted the Clean Power Plan in 2015 to reduce greenhouse gas emissions from existing power plants.

March

### **Environmental Justice Symposium with Gonzaga University School of Law**

On March 23 and 24, Attorney General Ferguson and Gonzaga University School of Law hosted a virtual symposium on environmental justice, titled “Environmental Justice: Race, Poverty and the Environment.” The symposium provided a platform for communities historically and disproportionately impacted by institutional racism, climate change, and pollution. The symposium featured four panel discussions, each focusing on a topic area: air, water, land and the built environment, and racism. Panelists included representatives from several Washington Tribes, community organizers, environmental scientists, environmental attorneys, and researchers. The symposium also featured keynote addresses from Jacqueline Patterson, Director of the NAACP Environmental and Climate Justice Program, and Fawn Sharp, President of the Quinault Indian Nation and President of the National Congress of American Indians. The Spokane Tribe provided opening and closing prayers for the two-day event. More than 650 people attended the symposium.

Sept.

### **Advocating Against Utilities Cutoffs During COVID-19 Pandemic**

The AGO’s Public Counsel Unit represents customers of state-regulated investor-owned utility companies, such as Lumen Technologies (CenturyLink), Frontier, Puget Sound Energy, Avista, and PacifiCorp. Public Counsel advocates for Washington utility consumers in cases before the Washington Utilities and Transportation Commission (UTC) and in state court. In 2020 and 2021, Public Counsel continuously monitored regulated utility company responses to the COVID-19 pandemic. Their work included submission of a petition for the utilities disconnection moratorium to be extended, which was ultimately granted through September 30, 2021.<sup>8</sup>

Oct.

### **Defending Section 401 of the Clean Water Act**

Attorney General Ferguson co-led a coalition challenging the EPA’s new rules to Section 401 of the Clean Water Act. The new rules forced states to issue permits for federally-approved projects based on incomplete reviews of impacts that industries would have on waterways, and limited the amount of information industries must provide to environmental regulators. The litigation led to restoration of states’ and tribal nations’ authority under the previous rule to protect health and human safety within their geographical areas when making permitting decisions related to water quality impacts, such as ensuring federal projects include water quality protections.<sup>9</sup>

Nov.

### **Illegal Amazon Pesticides Sales**

Attorney General Ferguson announced penalties against Amazon for the illegal sale of regulated agricultural and industrial-use pesticides. These agricultural and industrial-use pesticides pose substantial risks to human health and the environment, and are highly regulated to protect Washingtonians and the environment. Washington law requires sellers of these regulated pesticides, called Restricted Use Pesticides, to hold specific licenses and keep records about their sales and use. Some Restricted Use Pesticides are dangerous enough that the buyer must also obtain a specific license and keep records about their use. Amazon agreed to pay \$2.5 million for the unlawful sales, obtain a license in the future for selling regulated pesticides, enact specific and legally enforceable corporate reforms, such as safeguards to block illegal sales of regulated pesticides, and prohibit third-party sellers from selling these pesticides to customers in Washington unless they can comply with record-keeping requirements.<sup>10</sup>

Jan.

### **Criminal Prosecution for Electron Hydro Puyallup River Pollution**

Attorney General Ferguson filed criminal charges against Electron Hydro, LLC, and its Chief Operating Officer, Thom A. Fischer, for numerous violations of Washington's Water Pollution Control Act, Shoreline Management Act, and Pierce County Code. Electron Hydro operates a hydroelectric dam on the Puyallup River. The company undertook a construction project to update the dam in 2020 under Fischer's supervision. Without following requirements, the company attempted to temporarily divert the Puyallup River, and in doing so, caused artificial field turf containing crumb rubber to discharge into the river. Water samples from the Puyallup River showed turf and rubber in the water, and also discovered chemicals found in tires, which are toxic to Coho salmon.<sup>11</sup> The Puyallup Tribe has been working to protect salmon in the Puyallup River for decades. This litigation is ongoing.

March

### **2022 Legislative Session – Equity in State Task Forces and Affordable Hospital Care**

The Legislature passed two AGO agency-request bills related to environmental justice during the 2022 session. Senate Bill 5793 reduces barriers to participating in state task forces and workgroups for low-income individuals and community members with lived experiences by providing compensation of up to \$200 per day and reimbursement of travel, childcare, eldercare, and lodging. House Bill 1616 increases access to affordable hospital care for Washingtonians by expanding eligibility for financial assistance with out-of-pocket hospital bills for four million Washingtonians — approximately half of the state population. Both laws further the environmental justice movement by supporting equity and uplifting communities otherwise excluded from state decision-making processes and expanding access to quality health care.

April

### **USPS NEPA Violations**

Attorney General Ferguson filed a lawsuit against the United States Postal Service (USPS) asserting violations of NEPA made in February 2021 when USPS ordered 165,000 gas-powered vehicles, rather than switching to electric vehicles, to replace fleet vehicles. The lawsuit asserts that USPS did not release an environmental review of the decision before signing a contract and putting a substantial down payment for new vehicles. In the environmental review, released afterwards, USPS did not consider reasonable alternatives, such as buying electric vehicles and opting for gas vehicles where electric vehicles are infeasible, as required by NEPA. USPS also ignored key environmental impacts, such as continued air pollution in already-polluted communities, and did not consider state climate policies when purchasing gas vehicles. NEPA requires government entities to engage in a transparent, public, and informed decision-making process, which allows vulnerable communities and historically excluded communities to be part of decision-making processes that impact their health and environment. Environmental justice demands the same level of transparency and public involvement.<sup>12</sup>

June

### **Hanford Worker Protections**

In 2018, the Washington State Legislature passed House Bill 1723 to ensure that workers at the Hanford Nuclear Reservation with certain diseases, illnesses, and conditions could qualify for workers compensation and medical benefits. The Trump administration challenged this law in December 2018. The AGO defended the law and prevailed at the District Court and the Ninth Circuit Court of Appeals. In September 2021, the Biden administration appealed the Ninth Circuit ruling to the U.S. Supreme Court. In June 2022, the Supreme Court overturned the 2018 law. However, Hanford workers remain protected. During the 2022 legislative session, the Washington State Legislature passed Senate Bill 5890, which expands the scope of workers protected under the law. The AGO supported that legislation and assisted with drafting. The new law has not been challenged.

## **Criminal Conviction of Unlicensed Asbestos Contractor**

Attorney General Ferguson announced that asbestos contractor Derrick Boss was sentenced to 105 days in jail and ordered to pay full restitution to victims for the environmental crimes he committed in his asbestos abatement business. As the owner of Above and Beyond Asbestos Removal in Bothell, Boss deceived clients by masquerading as a properly licensed and qualified asbestos removal expert, when in fact he was decertified as an asbestos abatement contractor by the Washington Department of Labor & Industries in 2018. Boss pleaded guilty to two felonies and four gross misdemeanors, including two violations of the Clean Air Act. He must also pay full restitution in the amount of \$13,350 to the four people who paid him for his services. When materials containing asbestos are damaged, they can release dangerous fibers into the air, water, and/or soil that cause health problems, such as lung cancer, mesothelioma, and asbestosis.<sup>13</sup>

## **Penalties for Removing Catalytic Converters from Trucks**

The Attorney General's Office caught three Clark County companies illegally removing catalytic converters from their diesel trucks. A catalytic converter is a device incorporated into the exhaust system of a vehicle and converts toxic gases into less harmful pollutants. Pacific Foundation, a Vancouver-based drilling firm, agreed to pay a \$40,000 penalty, and will keep the four trucks without catalytic converters off the road until the converters can be replaced. Pacific Foundation and the other two Clark County companies used RPM Northwest for truck repairs. RPM Northwest's owners and service managers face federal charges for stripping trucks of their catalytic converters.<sup>14</sup>

## **Opposition to Rate Increases by Puget Sound Energy and Avista**

The AGO's Public Counsel Unit is challenging the rate increases proposed by Puget Sound Energy (PSE) and Avista. Public Counsel filed expert testimony with the Utilities & Transportation Commission (UTC) asserting that the rate increases for electricity and gas on consumers are not fair, just, and reasonable, and that the companies have not justified the extent of the increases they are requesting. The UTC will be hosting virtual public comment hearings for both cases in September.<sup>15</sup>

## **Motion to Halt Expansion of Gas Transmission Northwest Pipeline**

Attorney General Ferguson filed a motion to protest and intervene against an expansion to the Gas Transmission Northwest (GTN) methane gas pipeline that runs through Washington. The GTN pipeline expansion would increase greenhouse gases in Washington, derailing the state's efforts to fight climate change. GTN's corporate owner is Canadian-based TC Energy, the same company behind the Keystone XL pipeline. The motion asserts that GTN is hiding the true costs of the expansion and seeks to have utility customers unfairly subsidize the expansion, and that the project will increase air pollution and potentially compound existing environmental justice risks in vulnerable communities situated near the project. The motion also asserts that the draft environmental review of the expansion project did not consider whether farmworkers in Walla Walla County would be affected or how air pollution from wildfires would compound air quality issues in the area. Attorney General Ferguson is leading this motion and is joined by the Attorneys General of Oregon and California.<sup>16</sup>

# Endnotes

1. WASH. REV. CODE §70A.02.010(8) (2022).
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10. *AG Ferguson: Amazon Will Pay \$2.5 Million Over Illegal Sales of Regulated Pesticides*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (November 22, 2021), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-amazon-will-pay-25-million-over-illegal-sales-regulated-pesticides>.
11. *AG Ferguson Files 36 Criminal Charges Against Electron Hydro Company and COO for Polluting Puyallup River*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (January 10, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-36-criminal-charges-against-electron-hydro-company-and-coo>.
12. *AG Ferguson Files Lawsuit Against Postmaster DeJoy for Violating Bedrock Environmental Law When Replacing Mail Truck Fleet*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (April 28, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-postmaster-dejoy-violating-bedrock>.
13. *AG Ferguson: Asbestos Contractor Sentenced to Jail Time for Environmental Crimes*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (July 15, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-asbestos-contractor-sentenced-jail-time-environmental-crimes>.
14. Ryan, J., *Vancouver Business to Pay \$40,000 After Removing Catalytic Converters from Trucks*, KUOW (July 21, 2022), <https://www.kuow.org/stories/vancouver-business-to-pay-40-000-after-removing-catalytic-converters-from-trucks>.
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