MEANINGFUL COMMUNITY ENGAGEMENT IN THE CLEAN POWER PLAN

Lead Authors: Jessica Juarez Scruggs, Rudi Navarra, Sharonda Williams Tack with contributors Lisa Abbott and Lane Boldman
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This toolkit is part of a series created by the Clean Power for All Collaborative convened by Green for All. The Clean Power for All Collaborative includes People’s Action Institute, Center for Community Change, Clean Energy Works, Green For All, National Housing Trust, Natural Resources Defense Council, NextGen Climate America, Sierra Club, State Innovation Exchange, Union of Concerned Scientists, and U.S. Climate Action Network. The views and opinions expressed in this toolkit are those of the authors and do not necessarily reflect the endorsement of every member of the Clean Power for All Collaborative.

The toolkit provides concrete solutions to state regulators and advocates for the effective implementation of the Clean Power Plan (CPP). Each toolkit in the series addresses a set of questions and concerns about equity and fairness, and provides tangible solutions to ensure that the communities hardest hit by poverty and pollution are not overlooked in the development of state plans.

To access this toolkit and other topics online, visit www.thecleanpowerplan.com.

CPP is the first national effort to regulate greenhouse gases from existing power plants, which account for nearly 40 percent of the greenhouse gas emissions in the United States. The CPP is designed to reduce carbon output by about 32 percent below 2005 levels in the electricity sector. The Environmental Protection Agency (EPA) set unit-specific emission rates, as well as state-wide pollution budgets and state average rates based on each state’s existing energy production sources. The regulations would limit the carbon output of existing power plants, but leave plan design and implementation up to state regulators. Initially, states were required to submit an implementation plan for approval or ask for an extension by September 6, 2016 and imposes a deadline for final plan submission on September 6, 2018. Compliance requirements for covered power plants are set to begin in 2022 and end in 2030. On February 9, the U.S. Supreme Court placed a stay on the until the D.C. Circuit Court of Appeals rules on the merits of the Plan and the Supreme Court either rules on the merits or denies a petition to review the lower court’s decision. The stay does not speak to the merits of the rule and does not prevent states from continuing to plan for compliance or invest in energy policies that protect people and the planet and invests in clean and renewable energy and energy efficiency.
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“Public participation must go beyond one or two perfunctory hearings to achieve deep and meaningful engagement.”
Achieving a just, equitable and effective CPP depends on strong and broad community engagement. Public participation is critical to ensure that implementation decisions consider environmental justice.\(^2\) Public participation must go beyond one or two perfunctory hearings to achieve deep and meaningful engagement, especially for low-income communities, communities of color, tribal nations, displaced workers and other marginalized communities or “frontline communities.”\(^3\) These communities often face participation barriers; at the same time, they have borne a disproportionate burden of carbon pollution and the climate crisis.\(^4\) Early identification and consideration of community concerns, especially from these communities that have been hardest hit by carbon pollution, will help ensure that the state implementation plan will not have a disproportionately negative impact on communities and that all communities will receive a fair share of environmental protection and benefits expected from the implementation of the rule.

**INTRODUCTION**

The CPP sets unprecedented federal requirements for states to engage communities as part of a successful submission of plans to regulate carbon emissions in existing power plants. As a tool for equity and environmental justice advocates, this toolkit provides:

1. A long-term view of necessary steps to maximize impact of ‘meaningful involvement’ in communities.
2. A procedural checklist for advocates needing guidance on the best approaches to ensure meaningful involvement by state agencies tasked with drafting a CPP compliance plan.
3. A timeline with tools to ensure entry points for community engagement in the final CPP rule.
4. Mechanisms to troubleshoot obstacles to community participation beyond the initial period of meaningful engagement.
5. Four brief case studies showcasing two examples from the CPP process and two broader examples of organized community voices substantially influencing a state regulatory process.

**A LONG-TERM VIEW OF COMMUNITY ENGAGEMENT**

Too often community engagement in government processes is limited to backroom conversations with special interests and entrenched stakeholders or a few poorly attended public hearings. Done right, community engagement can allow state regulators to learn from the lived experience of communities on the front lines, address real public concerns and build stronger and more effective policy. Communities not only need information from their government, they need a voice in policy development. This requires more than just public education. It requires listening to community concerns and proactively seeking input and review. Investing in robust community outreach is critical to creating equitable and effective public policy, especially for frontline communities who have the most at stake. This type of engagement cannot be an afterthought – it must be woven into the policy creation process at every level.

**The Current Context**

The Supreme Court’s decision to stay the Clean Power Plan suspended its effects while the rule is reviewed by D.C. Circuit Court of Appeals and possibly before the Supreme Court itself. Despite the Supreme Court stay of the rule pending litigation in February 2016, as of...
May 2016, over half of the states had declared their support of the CPP, indicating they would continue with their planning process or were productively assessing the impact of the Supreme Court action. E&E Publishing provides a reliable CPP Hub resource listing the responses by states on the Supreme Court stay. Advocates should be diligent and watchful in their respective states and apply different tactics in response to the short-term political and regulatory realities. Because of the stay, the September 6, 2016 deadline for initial plan submittal no longer applies. Whether or not states are continuing their compliance planning process, advocates and communities must continue to push for and achieve meaningful engagement in the planning process.

For states that are suspending their compliance planning process or participating in parallel energy planning processes, community engagement will be a challenge. In these states, advocates must use all tools at their disposal to drive the conversation forward on a number of fronts, including the following:

- Conducting grassroots outreach to the community about the CPP, in effect duplicating the community engagement responsibilities that would fall on the state air quality agency under the CPP;
- Developing a multi-pollutant strategy that would analyze data on the cumulative effects of multiple pollutants on communities and use that information as a tool to influence energy discussions and decision-making;
- Participating in the state’s Integrated Resource Planning or equivalent state process;
- Communicating and engaging with Regional Transmission Operators (RTOs), if power plants in the relevant state participate in those markets, as a way to identify reputable data and best practices to influence the relevant state air quality and energy offices and other decision makers;
- Raising awareness about federal tax credits and incentives on solar, wind and energy efficiency, and how the state is employing these incentives to provide maximum state benefits and facilitate future compliance;
- Engaging directly with utilities in the state about their balance of energy sources and encouraging utilities to adopt programs that expand access to renewable energy and energy efficiency such as the Pay As You Save (PAYS) Model;
- Encouraging the state to continue multi-stakeholder engagement energy discussions that go beyond the air quality office and include other stakeholders, such as the state energy office.

Once the CPP is back on track, advocates should take a long-term approach to engagement and plan how to ensure participatory access in the full 15-year timeline of the CPP. Frontline communities should be directly engaged in all phases of the CPP including planning, reviewing the final plan, implementation and evaluation. States should design mechanisms for community input at each stage and, wherever possible, allow communities to direct how project funding is used in their neighborhoods. Ideally, state regulators will proactively engage communities and design a process that encourages participation.

However, even in states that do not make a good faith effort to encourage participation, advocates can use the public process to make the voices of impacted communities heard. Please see the ‘Key Dates & Entry Points for Community Engagement’ section of this toolkit for specific entry points and considerations on how to ensure such participation. See the Clean Power for All Collaborative’s Fair and Just Investments in Frontline Communities and Making Polluters Pay: Harnessing Value for Public Benefit toolkits for more information and further resources.
A PROCEDURAL CHECKLIST FOR A COMMUNITY ENGAGEMENT PROCESS

The CPP sets requirements for states to engage meaningfully with the public, including vulnerable communities, during the initial and final plan submittal processes. In the initial submittal, the final rule requires that states provide information to the agency about the community engagement they have undertaken and the means by which they intend to involve vulnerable communities in the development of the final plan. The EPA will be assessing state plans based on these outreach efforts. EPA gives examples of components of meaningful engagement in the final rule, which include:

- Outreach to vulnerable communities,
- Sharing information and soliciting input on state plan development and on any accompanying assessments,
- Selecting methods for engagement to support communities’ involvement at critical junctures in plan formation and implementation,
- Providing the public the opportunity to comment and responding to significant comments received, including comments from vulnerable communities,
- Conducting a public hearing and responding to comments before a final state plan is submitted.

For a detailed check-list of how to prepare for a meeting, ensure broad participation, and provide where-when-how logistics, please consult the detailed explanation of the National Environmental Justice Advisory Council’s (NEJAC’s) Model Guidelines for Public Participation. It is typically the responsibility of a state agency to ensure that public participation is both effective and transparent, however, that is often not the case. The burden of ensuring a thorough participation process too often falls on the advocate community.

In describing the goals of meaningful engagement, EPA instructs states to consult the EPA Guidance on Considering Environmental Justice During the Development of Regulatory Actions (the Guidance) released in May 2015. In the Guidance, EPA defines meaningful engagement as ensuring that:

- Potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity (i.e., rulemaking) that may affect their environment and/or health;
- The population’s contribution can influence the regulatory authority’s (in this case the EPA’s) rulemaking decisions;
- The concerns of all participants involved will be considered in the decision-making process; and
- The decision-makers (in this case the EPA) will seek out and facilitate the involvement of those potentially affected by the rulemaking process.”
For additional definitions, elements, challenges and barriers, please see NEJAC’s Model Guidelines.\textsuperscript{15}

The NEJAC model guidelines provide the following list of critical components of meaningful engagement:

- “A two-way process of distributing and receiving information to increase understanding among all stakeholders, and encourage active listening and the exchange of information.

- A process that aims to increase the number of community members who recognize themselves and their communities as stakeholders in the issues at hand.

- A system of processes and mechanisms for community outreach, input, and engagement at different levels. A greater emphasis on the quality of community input rather than the quantity of input. The quality of community engagement should be based more on what is ‘uploaded from’ the community than what is ‘downloaded to’ the community; and how well agencies are able to practically apply the input received from community members.\textsuperscript{16}

- Recognition of local community members as an ‘encyclopedia of experientially-tested and validated insight,’ and consultation of that resource as part of the foundation of community engagement efforts. The success of community engagement depends on the maximum utilization of local community members as the foundation (not just an added value) to a comprehensive, holistic approach.

- Efforts to ‘meet people where they are.’ Methods, processes, and information should be targeted and applicable to the specific communities.\textsuperscript{17}

- An approach that is tailored to the specific, unique needs of the particular community where activities are being implemented. Common elements of engagement should not overshadow the uniqueness of every community.”\textsuperscript{18}

Frontline communities face many barriers that can silence their voices. These barriers can prevent frontline communities from easily engaging in government processes including long and irregular hours at low wage jobs, lack of access to transportation and child care, language barriers, lack of access to information about government and government meetings and the distrust engendered by decades of disinvestment, state violence and structural oppression in their communities. States must take proactive steps beyond simply publicizing state meetings to ensure that all communities can participate.\textsuperscript{19} Concrete steps that can encourage participation by marginalized communities include, but are not limited to:

- Proactive outreach to key community leaders, community based organizations and community institutions such as schools, community centers, churches, temples and mosques.\textsuperscript{20}

- Choosing locations for public hearings that are accessible by public transportation and located within key neighborhoods;

- Offering hearing and information sessions at different times of the day to accommodate multiple types of schedules;

- Advertising hearings and meetings in multiple languages, offering translation services and publishing key elements of the initial and final plan in multiple languages;

- Providing childcare or holding hearings and meetings in locations that are friendly to children;

- Responding to community-based organizations and holding special meetings or hearings for their bases of members when requested; and

- Creating direct positions for community representatives such as community representative slots on any planning committees, review boards or other decision-making bodies.
Finally, in order for communities to be effectively involved, an environmental justice analysis and evaluation should be at the forefront in all policy decisions from planning through implementation. The CPP final rule recommends that states conduct an environmental justice analysis. An environmental justice analysis is a process for states to identify existing baselines of pollution burdens across communities and understand the impact – positive or negative – that the development, implementation and enforcement of the state implementation plan may have on frontline communities.

This process helps ensure that states choose a compliance measure for their final state implementation plan that does not cause adverse impacts, and provides job creation and economic development opportunities in low income, communities of color, Native American and Indigenous people and other marginalized communities. An environmental justice analysis provides a voice, a process and a wealth of data for frontline communities.

If a state conducts an environmental justice analysis, it provides additional opportunities for community engagement and give the hardest hit communities a chance to hold regulators accountable. It can also be a powerful tool to broaden the participatory process in the CPP. Community members can assist their state agency in conducting an environmental justice analysis by providing information about the coal fired and gas fired power plants of concern, and their local environmental and health impacts, community demographic information, and cumulative impacts of other environmental hazards in the community. When the state gets on the ground knowledge from community members it helps them conduct a more complete and accurate environmental justice analysis.

An environmental justice analysis can become a powerful tool to ensure community needs are met and broaden the participatory process in the CPP. Please see the Clean Power for All Collaborative’s guides *Fair and Just Investments in Frontline Communities through the Clean Power Plan* and *Cleaning Up Pollution Hotspots* for more information on conducting an environmental justice analysis.

“An environmental justice analysis provides a voice, a process and a wealth of data for frontline communities.”
In order for communities to maximize the benefits from the CPP, it is imperative that advocates engage early to inform the initial submission and final plan, and see beyond the meaningful engagement period as described by the CPP. The opportunities for community engagement and accountability of the final CPP rule should be seen in at least a fifteen-year timeline. The following dates and stages are entry points for substantial community engagement beyond the initial submission period.

### Initial Plan

**Prior to Initial Submission:** Before September 6, 2016 (see timeline caveat above), state agencies regulating energy and environment must draft the initial state submission processes to create the state implementation plan. This drafting process should include engagement with stakeholders, listening sessions and other outreach to understand community concerns and priorities. The process the state uses to solicit input must be described as part of the initial submission (see below).

**Initial Submission:** By September 6, 2016, each state with at least one affected Electric Generated Unit (EGU) is expected to submit a final plan or a request for a two-year extension. A request must describe any opportunity for public comment and meaningful engagement with stakeholders, including vulnerable communities, now and going forward. Due to the stay, the rule is not currently in effect. Therefore this deadline no longer applies; a new deadline will be set once the legal challenge is resolved.

**Progress Report:** By September 6, 2017, a state receiving an extension must submit a report to EPA that commits to a plan approach and includes draft or proposed legislation or regulations. It is unclear whether the litigation may be concluded by this deadline.

### Progress Reports & Implementation

**Implementation Reports, Generally:** A state must submit a report by July 1, 2021 to demonstrate it is on track to implement its approved plan. Then a state must submit an interim report by July 1 of the year following the three interim step periods between 2022-2029 (each state sets their step period schedule). After the final compliance period begins in 2030, a state must submit reports by July 1 every other year (2032, 2034, 2036, etc.), addressing "all aspects of the administration of the state plan and overall program." The ERC Program Review for Rate-Based Programs: State implementation reports must include an ERC program review if the state runs a rate-based program. The program reviews "must be made publicly available." Ongoing State Evaluation: The EPA recommends that states conduct evaluations of their own to determine the impacts of their plans on overburdened communities. The EPA will provide trainings, resources and recommended best practices to assist state regulators and advocates. The EPA has also committed to continuing to solicit feedback from communities and states on topics for trainings and resources.

**Suggested Opportunity for Advocates:** Advocate for periodic hearings and listening sessions to be held to encourage ongoing engagement with the public and to guide revisions to the plan when needed. These could coincide with implementation report timelines (see previous suggestion). Advocates should also be pushing for ongoing environmental justice assessments and evaluation as part of the state evaluation process. In addition, advocates should use data published in reports and reviews to perform their own assessments of the plan and call for changes that strengthen community protections and investments.

The CPP may require an accounting of meaningful engagement in the initial submission but merely “engagement” in the final plan. States may be focused on meaningful engagement during the initial submittal, but not for the years following submission and approval of a final plan. Meaningful and substantial engagement throughout the process is critical to ensuring community interests are reflected in the state implementation plans. Advocates should push for robust community engagement throughout the drafting and submission process. In addition, advocates can and should push for additional engagement opportunities to report back on the plan that is drafted and during the plan’s implementation, including during the steps listed below.

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MECHANISMS TO TROUBLESHOOT OBSTACLES TO PUBLIC PARTICIPATION

If a State does not submit a Satisfactory Plan:
EPA will disapprove a state’s submittal within one year. If EPA disapproves a state’s plan, EPA will promulgate a federal plan within one year. However, states will be given flexibility to resubmit a compliance plan at any point in the process.

Implementing a Federal Plan in your State:
Details about implementation of a Federal compliance plan are not yet clear, as the final Federal rule is in draft form. The initial draft of the Federal Implementation Plan did not include significant meaningful involvement provisions; hopefully, the final draft of the FIP will include meaning involvement requirements. The FIP option does remain an option in your state.

Suggested Opportunity for Advocates:
Demand that the EPA hold hearings or meetings in the affected state, as part of the rulemaking process. The comment period attached to rulemaking can be used to lift up community concerns. In addition, advocates should document community experiences and stories that demonstrate weaknesses in the plans and put pressure on state elected officials and the EPA to address these impacts.

EPA Review of the State Programs:
The EPA will conduct its own assessment during the implementation phase of this rulemaking to determine whether the implementation of state plans developed pursuant to this rulemaking and other air quality rules are, in fact, reducing emissions and improving air quality in all areas or whether they are localized air quality impacts that need to be addressed under other Clean Air Act authorities. The EPA will house this assessment, along with the proximity analysis on its CPP Community Portal linked to the rulemaking’s Web site.

Suggested Opportunity for Advocates:
Monitor the assessments when they are posted. If assessments or community experiences suggest state plans are deficient in some way, it could be basis for petition to the EPA to initiate a “SIP Call” – a process that can force states to strengthen their plans.

SIP Call/Revisions:
EPA proposes to adapt the “SIP Call” mechanism used for state plans under section 110. A “call” for revisions may occur if a state plan is “substantially inadequate”, or if a state were not implementing or enforcing its own plan. Under the proposed terms of the “call,” EPA would notify a state of deficiencies; the state would submit plan revisions within 18 months or EPA would impose a federal plan.

Suggested Opportunity for Advocates:
Advocate for a public process to identify plan revisions, which could track the process of any corrective measures provisions and help revisions reflect community concerns. Community groups with concerns about the enforcement of the CPP should bring violations by covered EGUs to public attention to pressure the EPA or state to take action. Groups should also use public advocacy and engagement to put pressure on state elected officials to strengthen their plans and accompanying state regulations throughout the CPP process.
Right now Kentuckians have the opportunity to shape a just transition to a clean energy economy – one that is good for all communities. While key political leaders from both major parties in the Bluegrass state have denounced the Clean Power Plan, several key organizations, including Kentuckians For The Commonwealth and Kentucky Conservation Committee, are providing leadership to change the conversation and improve outcomes for Kentuckians. These groups are actively engaging diverse communities to build understanding, support, and community power for solutions to create jobs, improve health, and advance equity while also meeting the state’s obligation to reduce CO2 emissions. Kentucky Conservation Committee is a respected advocacy group whose mission is to make sound environmental stewardship a priority for elected officials and voters. Since well before the final rule was announced, KCC has worked to engage stakeholders in Kentucky’s environmental community to inform the actions of policy-makers and regulatory agencies. KCC provides numerous public presentations and webinars, hosts a monthly stakeholder call, and curates a website for coalition members with resources and analysis about CPP implementation.
And the statewide grassroots group Kentuckians For The Commonwealth has launched the Empower Kentucky™ project to engage frontline communities and diverse stakeholders – including labor, students, affordable housing providers, faith communities, environmental justice advocates, economic development leaders, health professionals and more – in taking charge of their own energy future. This spring KFTC organized a series of community conversations, called a Seat At The Table, attended by 750 people across all six congressional districts.

These events offered information about Kentucky’s changing energy landscape and sparked conversations about a shared vision for a clean energy future.

“We believe all Kentuckians deserve a voice and a seat at the table as decisions are made about our energy future.”

– Dana Beasley Brown, KFTC chairperson

Participants shared their ideas about ways to advance a just transition while complying with the Clean Power Plan. The input gathered will inform the group’s work to craft a people’s implementation plan for the state.

Together these organizing and public engagement efforts are generating public will to address the many opportunities and the risks the CPP poses for frontline communities. The process of developing a crowd-sourced implementation plan is itself helping to build community power, foster strategic relationships, and focus the public conversation. And a key outcome will be a blueprint for future organizing campaigns and policy change. For more details on the Empower Kentucky project, please see the resources section.
CASE STUDY:

ENVIRONMENTAL JUSTICE ADVOCATES SHAPE THE COMMUNITY ENGAGEMENT PROCESS IN ILLINOIS

Although the community engagement process in Illinois remains unclear during the Supreme Court’s stay of the CPP, the Illinois Commission on Environmental Justice (ICEJ) and some environmental justice, social justice and economic justice advocates have pushed the Illinois Environmental Protection Agency (IEPA) to create a robust and meaningful community engagement process that is accessible to all frontline communities. The IEPA requested a draft framework for engaging with vulnerable communities from the IECJ. The draft framework was drawn from the following components: Community engagement requirements under the CPP, IEPA’s goals under their Environmental Justice Policy, U.S. EPA’s Guidelines on Meaningful Engagement, NEJAC’s recommendations on components of meaningful engagement, and draft criteria for defining vulnerable communities in Illinois. The ICEJ and community advocates also requested that the IEPA not only hold listening sessions prior to developing a draft state implementation plan, but also when the draft plan is complete and during the implementation period. In addition, the IECJ and community advocates demanded a regularly updated website and the designation of a staff member to answer community inquiries about the CPP.
In January 2016, the IEPA requested an outreach plan for engagement with vulnerable communities in Illinois on the CPP. Little Village Environmental Justice Organization (LVEJO) and the Sierra Club convened two statewide meetings to garner input from environmental justice, economic justice and social justice allies across Illinois to inform the outreach plan. Participants were community members and advocates from Chicago, Central Illinois and Southern Illinois. Participants discussed what criteria should define vulnerable communities in the state of Illinois and where CPP listening sessions should be convened to reach the communities that stand to be most impacted by implementation of the CPP. This process resulted in a letter laying out criteria for defining vulnerable communities under the CPP, a list of ten cities where listening sessions should be held to reach the most vulnerable communities in the state and a process to ensure meaningful and robust listening sessions.

In February, the IEPA responded with their criteria for identifying vulnerable communities in Illinois, a draft list of ten listening session locations on their radar and some ideas on how to conduct the listening sessions. The IEPA adopted much of the community recommended criteria for identifying vulnerable communities and more than half of the suggested listening session locations in vulnerable communities. The IEPA also stated that they would provide translators and translated materials for the listening sessions and a CPP website for the public. These steps reflect progress towards ensuring a community engagement stakeholder process that is provisionally scheduled to take place beginning in Spring 2016. Community advocates are deeply disappointed by the lack of action from the Governor’s office, but continue to push for opportunities for community engagement and for a clean energy economy in Illinois that reflects the needs of frontline communities.

These demands include hearings and listening sessions in more frontline communities, direct meetings with concerned communities and, most importantly, a substantial voice in the substance of any state energy policy changes. The final result in Illinois remains unclear, but community advocates are dedicated to organizing frontline communities in Illinois and pushing state agencies to create a robust, meaningful, community-led state implementation process that reflects community input and serves the needs of the hardest hit communities.

When the Supreme Court made the decision to stay the CPP rule, the Governor’s office canceled their February 15th meeting with IEPA to review their CPP stakeholder outreach plan for listening sessions. Despite community demands, the Governor’s office has not announced whether the IEPA can begin the community engagement stakeholder process that is provisionally scheduled to take place beginning in Spring 2016. Community advocates are deeply disappointed by the lack of action from the Governor’s office, but continue to push for opportunities for community engagement and for a clean energy economy in Illinois that reflects the needs of frontline communities.
CASE STUDY:

ONEAMERICA & REDISTRICTING IN WASHINGTON STATE

OneAmerica staff members prepare for a public hearing on redistricting in Washington. (Photo Credit: OneAmerica)
OneAmerica, a statewide immigrant rights organization, and a coalition of community allies used the community engagement process to organize and win a new Congressional district map that ensures a strong voice for immigrants and people of color in the Washington Congressional delegation. In the 2010 census, Washington State was apportioned a tenth Congressional district, based on its growing population. This growth was largely due to a 71 percent increase in the Latino population in Washington and a 50 percent increase in Asian Pacific Americans.

The bipartisan Washington State Redistricting Commission was charged with drawing a new congressional map. OneAmerica, the Win-Win Network, the Latino Community Fund, Tacoma Black Collective, Asian Pacific Americans for Civic Empowerment and other community based organizations formed the United for Fair Representation coalition in early 2011 to ensure the district map reflected the needs of immigrants and communities of color. The coalition created its own proposed maps and turned out hundreds of community members to public hearings including bringing over 150 people to the last hearing. Hundreds more submitted written testimony and OneAmerica successfully advocated for extra hearings in low-income communities and provided translation.

After eight months of organizing, the Washington State Redistricting Commission unanimously voted to approve maps that included Washington State’s first majority-minority congressional district and four majority-minority legislative districts across the state. OneAmerica and the United for Fair Representation Coalition successfully advocated for a more open public process and used organizing and community education to increase political power for immigrant communities and communities of color...
Community-led grassroots organizations are using public comment periods, public hearings and other community engagement tools to keep hydraulic fracturing (“fracking”) out of Illinois despite corporate pressure from natural gas and drilling companies. When Illinois opened the door for fracking in 2012, Fair Economy Illinois (FEI) sprang into action. FEI is a statewide alliance that organizes urban, suburban and rural residents around issues that affect the common good including limiting corporate power, ensuring that Illinois has enough revenue to support the services Illinoisans need to lead dignified lives and protecting the environment. FEI is made up of member-led grassroots organizations Illinois People’s Action (IPA), ONENorthside, Jane Addams Senior Caucus and IIRON dedicated to putting people and planet first.
Despite fierce opposition from frontline communities, Governor Pat Quinn took steps to legalize hydraulic fracturing in Illinois in 2013. Communities whose water, land and health were threatened by fracking responded en mass when the Illinois Department of Natural Resources (IDNR) issued rules that failed to protect communities from contamination. IPA organized its members and their allies in FEI to make their voices heard through the public input process. In a fifty day comment period, FEI members submitted more than 36,000 comments against the rules, more than 80 times the previous record number of comments submitted. In addition to written comments, FEI also successfully lobbied IDNR to increase the number of hearings from one to five. The strength of the community response forced a de-facto 400 day moratorium on hydraulic fracturing and gave community advocates time to continue to organize against extractive industries. When Minard Run Drilling Company, the company that successfully sued the government to win the right to drill on public land, secured a drilling permit in McLean County, IPA responded again. Over 100 grassroots community leaders provided over 19 hours of testimony to the McLean County Zoning Board of Appeals. After five nights of testimony, the board overwhelmingly rejected the drilling permit. FEI and IPA’s fight against fracking demonstrates the power that engaged and activated communities can wield in a public rule-making process despite overwhelming odds. Using public input processes to effectively activate impacted communities and organize a strong public response allows frontline communities the opportunity to insert themselves into public policy processes even when state outreach is lacking.
Clean Air Act: The Clean Air Act gives the EPA the authority to set limits on airborne pollutants that are dangerous to public health and the environment. Under 111(d) the EPA has the authority to set a level of emissions defined as the best system of emission reduction or BSER and states develop and submit for approval to EPA implementation plans to meet these levels in the context of their state.

Clean Energy Incentive Program (CEIP): The CEIP is a program within the CPP that incentivizes the creation of renewable energy or energy efficiency projects that serve low-income communities. It is designed to reward early investments in renewable energy (RE) generation and demand-side energy efficiency (EE) measure that generate carbon free MWhs or reduce energy demand during 2020 and 2021. The program makes additional allowances or Emission Rate Credits (ERCs) of up to 300 million short tons of carbon emissions. RE projects will receive a one to one credit match and demand-side EE will receive a two to one match. State participation is currently optional, but it is mandatory under the Federal Implementation Plan.

Electric Generating Units (EGUs): EGUs are the technical term for the fossil fuel-fired electric generating plants and entities impacted by the CPP’s carbon reduction goals used in the EPA’s guidance and implementation materials.

Emission Reduction Credit (ERC): An ERC is an administratively created, tradable instrument with a unique serial number that “represent[s] one MWh of actual energy generated or saved with zero associated CO2 emissions” (40 C.F.R. §60.5790). In other words, a renewable energy producer or (in the case of the CEIP a wind or solar producer) an energy efficiency project generates energy savings, has those savings verified and then the energy producer can sell that credit to a coal or gas power plant that needs the credit to comply with the carbon limit. The credit enables the coal or gas power plant to administratively lower their emission rate (the amount of pollution they emit for every megawatt hour of electricity they produce) to the rate required by the state plan. ERCs may be sold, leased, banked or traded under certain circumstances within the CPP and are the main unit in the carbon market under a rate-based plan. For more information and an in-depth discussion of ERCs, please see Emission Rate Credits (ERCs) in the Clean Power Plan by the Environmental Policy Initiative at Harvard Law School available here: http://environment.law.harvard.edu/wp-content/uploads/2015/08/Emission-Rate-Credits-in-the-Clean-Power-Plan.pdf

Environment & Energy Publishing (E&E): E&E publishing is a news outlet focused on the environmental and energy sector including coverage of legislation, rulemaking, policy, markets and other topics. For more information, visit: http://www.eenews.net/eep/learn_more.
Environmental Justice: Environmental justice is a social justice, grassroots movement that seeks to protect communities of color and low-income communities from being overburdened with pollution. Citizens of different races and classes experience disparate environmental quality, directly affecting their public health and quality of life. The movement uses policy advocacy, research, community capacity building and organizing to advance environmental justice. Environmental Justice refers to those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities where people can interact with confidence that their environment is safe, nurturing, and productive. Environmental Justice is served when people realize their highest potential without experiencing the -isms. This definition is from Dr. Bunyan Bryant and was taken from the EJLF State Guidance for Clean Power Planning Toolkit (see the resources section).

Federal Implementation Plan (FIP): The Clean Air Act allows states the power to design their own pollution control programs within the EPA’s specifications, including the Clean Power Plan. For states who choose not to submit their own unique plan or fail to submit an adequate plan, the EPA will impose and enforce the FIP. In addition, the FIP can serve as a model for state plans. The FIP is actually two plans – a rate-based approach and a mass-based approach. For more information on FIP and to read the proposed final rule in its entirety, visit: https://www.epa.gov/cleanpowerplan/clean-power-plan-existing-power-plants#federal-plan

E.O. 12898: E.O. 12898 is the 1994 Executive Order entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. It was signed by President Clinton and is one of the key federal documents on environmental justice. It instructs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations and directs each agency to develop a strategy for implementing environmental justice.

Frontline Community: Other terms include environmental justice communities, disadvantaged communities and marginalized communities. An environmental justice community refers to a community experiences the impact of environmental racism and environmental injustice. Environmental justice communities are communities of color, tribal nations, low-income communities and other communities that experience systemic oppression and are overburdened with pollution. These communities experience harm because of greater vulnerability to environmental hazards, greater cumulative impacts and greater economic burdens related to energy among other things. These same communities often make up the grassroots power base of the environmental justice movement.
Integrated Resource Planning (IRP): An IRP is a utility plan to meet forecasted annual peak and energy demand with some established reserve margin using both demand-side and supply-side resources over a set future period. Many state laws or public utility commissions require IRP from regulated utilities. For an IRP to be successful, it must include meaningful engagement with stakeholders and oversight. See the resources section for more information.

Mass vs. Rate: The EPA has created statewide goals for carbon emission reduction in two forms. Mass-based goals are measured in pounds of CO2 per megawatt hour generated (lbs/MWh). Rate-based goals are measured in total short tons of CO2 emissions.

National Environmental Justice Advisory Council (NEJAC): NEJAC is a federal advisory committee to the EPA that was established in 1993. NEJAC’s purpose is to provide advice and recommendations about environmental justice across the EPA’s areas of work. In addition NEJAC is charged with strengthening partnerships with other agencies, Tribal, state and local governments and community stakeholders and improving outcomes for EJ communities through the EPA’s programs, policies and activities.

Regional Transmission Operators (RTOs): RTOs (also known as Independent System Operators or ISOs) are organizations that are responsible for electricity transmission over large interstate areas. They manage, coordinate, control and monitor the electricity transmission grid. RTOs were created by the Federal Energy Regulatory Commission (FERC) to manage the operation of a multitude of interconnected independent power supply companies. They must match supply and demand instantaneously to keep the grid reliable and online and ensure sufficient generation and backup power to keep the grid functional and handle any disruptions in the grid.

State Implementation Plan (SIP) or State Compliance Plan: The Clean Air Act allows states the power to design their own pollution control programs within the EPA’s specifications, including the Clean Power Plan. The SIP is the state-designed plan that reflects a state’s unique circumstances and stakeholders. States must submit plans to the EPA for approval (see the timeline included in this toolkit). For states who choose not to submit their own unique plan or fail to submit an adequate plan, the EPA will impose and enforce the FIP (see above).
**KEY RESOURCES**


**Empower Kentucky** - Kentuckians for the Commonwealth have created a parallel engagement process for ordinary citizens to create their own state implementation plan and ideas for Kentucky’s energy future. To learn more, visit: www.empowerkentucky.org


**Guidance on Considering Environmental Justice During the Development of Regulatory Actions** - This EPA guidance document lays out the EPA recommendations and requirements for engaging frontline communities and ensuring that their needs are included in the plan. Available at: https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action

**Best Practices in Electric Utility Integrated Resource Planning** - For an in-depth discussion of Integrated Resource Planning (IRP), see this guide from the Regulatory Assistance Project (RAP), a global non-profit team of experts focusing on long-term economic and environmental sustainability of the power and natural gas sectors. Available at: https://www.raponline.org/document/download/id/6608
REFERENCES


3 Courts have identified three distinct goals of the requirement that agencies engage with local communities in the planning process. ‘First, notice improves the quality of agency rulemaking by ensuring that agency regulations will be “tested by exposure to diverse public comment.” Second, notice and the opportunity to be heard are an essential component of “fairness to affected parties.” Third, by giving affected parties an opportunity to develop evidence in the record to support their objections to a rule, notice enhances the quality of judicial review.’ Small Refiner Lead Phase-Down Task Force v. United States Envtl. Prot. Agency, 705 F.2d 506, 547 (D.C. Cir. 1983) (internal citations omitted).

4 See the Clean Power for All Collaborative’s Guide Fair and Just Investments in Frontline Communities through the Clean Power Plan for more information on disparate impacts on frontline communities.

5 See this list of supportive states requesting guidance on continuing the planning process coordinated by the Georgetown Climate Center, available here: http://www.georgetownclimate.org/states-ask-epa-for-more-information-during-the-supreme-courts-stay-of-the-clean-power-plan

6 CPP Hub available online at: http://www.eenews.net/interactive/clean_power_plan#planning_status_chart

7 For more on the Pay As You Save Model (PAYS) see the Fair and Just Investments in Frontline Communities through the Clean Power Plan Guide or visit: http://cleanenergyworks.org/blog/pay-as-you-save-pays-harnesses-a-proven-utility-investment-model-to-offer-virtually-all-consumers-cost-effective-energy-upgrades/

8 Clean Power Plan final rule at 1324.

9 Clean Power Plan final rule at 1324.

10 Clean Power Plan final rule at 1323.

11 Clean Power Plan final rule at 1323.


Cf. Sims v. Dep’t of Corrs. & Rehab., 216 Cal. App. 4th 1059, 1073 (Ct. App. 2013) (‘Public participation cannot be considered “meaningful,” simply because large numbers of interested people were provided an opportunity to be heard. The public participation contemplated by the APA is not a numbers game’).

See Dine Citizens Against Ruining our Env’t v. Klein, 747 F. Supp. 2d 1234, 1261-62 (D. Colo. 2010) (OSM notice of permit revision application near Navajo Nation was inadequate because it was only published in local newspaper and not translated into language spoken by tribal members or broadcast on tribal radio).

NEJAC, at 2

Executive Order 12898, the foundational document that first required agencies to engage with environmental justice communities and under which NEJAC was created, does not itself create a right to judicial review. However, several courts have held that an agency’s discretionary judgment to include an environmental justice analysis in its NEPA evaluation makes the environmental justice measures subject to the Administrative Procedure Act “arbitrary and capricious” standard of review. See, e.g., Cmtys. Against Runway Expansion, Inc. v. FAA, 355 F.3d 678, 689 (2004).

See Allen v. Nat’l Institutes of Health, 974 F. Supp. 2d 18, 46 (D. Mass. 2013) (citing role of Community Liaison Committee consisting of 10 local members of the public with “ethically, rationally, and demographically diverse membership” in ensuring adequate public participation and transparency for specific project)

40 C.F.R. § 60.5760

40 C.F.R. § 60.5765

40 C.F.R. § 60.5765(c)
Meaningful Community Engagement in the Clean Power Plan

24 40 C.F.R. § 60.5745(a)(12)
25 40 C.F.R. § 60.5765(a)(3)
26 40 C.F.R. § 60.5745(a)(12)
27 40 C.F.R. §60.5740
28 40 C.F.R. §60.5870
29 40 C.F.R § 60.5870(b)(4)
30 80 Fed. Reg. 64,908
31 80 Fed. Reg. 64,919
32 40 C.F.R. §60.5715
33 40 C.F.R. §60.5720
34 80 Fed Reg 64,918
35 www.epa.gov/cleanpowerplan) (80 Fed Reg. 64,919).
36 proposed § 60.27(j)
37 proposed §60.27(j)
38 To learn more about Empower Kentucky and find event listings, visit: www.empowerkentucky.org/events
39 For more information on Little Village Environmental Justice Organization, please visit http://lvejo.org.
40 For more information on the Illinois Chapter of the Sierra Club, please visit https://illinois.sierraclub.org
41 For more information on OneAmerica, please visit www.weareoneamerica.org


45 For more information on Fair Economy Illinois, visit http://www.faireconomyillinois.org/about/


47 Needles, Zach, “Court affirms that surface rights owners, even Uncle Sam, are subservient,” Pittsburgh-Post Gazette, Oct. 7 2013. Available at: http://www.post-gazette.com/business/legal/2013/10/07/Court-affirms-that-surface-rights-owners-even-Uncle-Sam-are-subservient/stories/201310070083
Fossil Fuels = Death
Clean Power = Less
MEANINGFUL COMMUNITY ENGAGEMENT IN THE CLEAN POWER PLAN