



April 22, 2024

SUBMITTED VIA EMAIL

Governor's Environmental Justice Advisory Council

Jeff Hart
Governor's Office
Jeff.Hart@NC.Gov

Machelle Baker Sanders
Secretary, Department of Commerce
Machelle.Sanders@commerce.nc.gov

Re: Comments in Response to the Department of Commerce's Draft Environmental Justice Goals and Measurable Outcomes

Dear Environmental Justice Advisory Council Members and Secretary Sanders:

On behalf of North Carolina Sustainable Business Council, North Carolina Environmental Justice Network, NC FIELD, Inc., Wake Forest Environmental Law and Policy Clinic, UNC Environmental Justice Action Research Clinic, North Carolina NAACP, Duplin County Branch of NAACP, Neighbors for Better Neighborhoods, Environmental Justice Community Action Network, West End Revitalization Association, 7 Directions of Service, Down East Coal Ash Environmental and Social Justice Coalition, Danielle Koonce, CleanAIRE NC, Toxic Free NC, NC Black and Green Network, The Lilies Project, NC Sierra Club, Emancipate NC, Winyah Rivers Alliance, McDowell Local Food Advisory Council, Dogwood Alliance, Center for Biological Diversity, and North Carolina Conservation Network, the Southern Environmental Law Center and Southern Coalition for Social Justice submit the following comments on the draft Environmental Justice Goals and Measurable Outcomes of the North Carolina Department of Commerce ("The Department"). On October 24, 2023, Governor Roy Cooper signed Executive Order 292 Advancing Environmental Justice for North Carolina ("EO 292").¹ Section 7 of the order directed each cabinet agency to develop and submit, to the Governor's Environmental Justice Advisory Council ("EJAC") for public comment, at least three draft environmental justice goals and measurable outcomes.² The Draft Environmental Justice Goals and

¹ Exec. Order No. 292, Advancing Environmental Justice in North Carolina (Oct. 24, 2023), <https://governor.nc.gov/executive-order-no-292/open>.

² *Id.* § 7.

Outcomes for the Department of Commerce (“draft EJ goals”) were made public February 23, 2024. We, the undersigned, appreciate this opportunity to submit comments on these draft EJ goals.

Executive Order 292 elevates environmental justice as a priority for Governor Cooper’s administration. It instructs each cabinet agency to “develop *at least* three draft EJ goals and measurable outcomes.”³ The preamble to Executive Order 292 makes clear that the governor intended for all cabinet agencies, in developing their goals and outcomes, to endeavor to fully incorporate environmental justice and equity considerations into the full range of the agencies’ work, and to invest meaningful amounts of funding into achieving those goals.⁴ Section 5 emphasizes the importance of identifying funding sources for environmental justice work, maximizing the state’s dedication of resources for advancing environmental justice, and developing sources of expertise and guidance to aid in pursuing and achieving environmental justice.⁵

In its 3 draft EJ goals, the Department has failed to consider the environmental justice impacts of its decisions. We are encouraged by the Department’s metrics defining “environmental justice goals” and “measurable outcomes.”⁶ These bullet points lay out a clear, overarching standard for the Department’s three goals. However, the goals themselves fall short of addressing the disproportionate, adverse impacts on environmental justice communities (“EJ communities”) that result from the Department’s “economic development” and incentives programs. In the spirit of EO 292, the Department must do more to acknowledge and address the environmental justice impacts caused by their actions.

The Department of Commerce is the gatekeeper of industrial development in North Carolina. The Department recruits polluting businesses, with grants and funding, to locate in North Carolina.⁷ Some Department incentives even encourage polluters to locate in EJ communities alongside other polluting industries under the guise of “economic development.”⁸ The Department plays a significant role in creating

³ *Id.* § 7.

⁴ *See id.* at 1–2 & § 5.

⁵ *Id.* § 5.

⁶ N.C. Dep’t of Commerce, Executive Order 292, Advancing Environmental Justice for North Carolina Goals and Measurable Outcomes at 1 (2024) [hereinafter Draft EJ Goals], <https://governor.nc.gov/commerce-environmental-justice-goals/download?attachment>.

⁷ *About Us*, N.C. DEP’T OF COMMERCE, <https://www.commerce.nc.gov/about-us> (last visited Apr. 21, 2024) (“The Department connects businesses with the site locations, workforce, and infrastructure they need to succeed in one of the nation’s top states for business. We also connect local communities with the grants and funding they need to attract new business and ensure future prosperity. . . . Marketing North Carolina as a business and visitor destination is another function of the Department”).

⁸ N.C. Dep’t of Commerce, Guidelines for Operation and Implementation of One North Carolina Fund Grant Program § 6.4(e) (2016), <https://www.commerce.nc.gov/guidelines-one-north-carolina-fund-onenc/open>

environmental injustices and can take the opportunity to significantly ameliorate the same. We urge the Department to modify its goals to include specific, measurable, achievable, relevant, and time-bound actions⁹ it will undertake to significantly diminish existing environmental injustice caused by its activities and to prevent future environmental injustices that arise because of its activity.

I. The Department Must Modify Draft Goal 1 to Create a New Commitment to Advance Environmental Justice

The Department should modify draft Goal 1 to describe specific actions it will take to create a more diverse climate change workforce and how doing so will advance environmental justice as defined in EO 292. Alternatively, we propose that the Department replace this draft goal with a commitment to create a state-wide program that will create green jobs in EJ communities. The Department's Draft Goal 1 states:

The NC Department of Commerce will support employers in recruiting a diverse workforce in industries and occupations related to addressing climate change by advancing the recommendations and strategies in the Climate Change Workforce Diversity Report.

The Department is a partner in the North Carolina State University Department of Energy grant, "Smarter NC," which is focused on assisting workforce recruitment in low-income communities impacted by high pollution. They are targeting two areas of the state to focus their efforts. The Department and Cabinet workforce agencies will coordinate employer engagement opportunities with NCSU's "Smarter NC" project and support 50 employers to build a talent pipeline in the electric vehicle/advanced manufacturing space by February 2025.¹⁰

This draft goal does not provide a specific, measurable action or outcome. It also appears to merely recommit the Department to goals it set under a previous executive order and partnership.¹¹

("Special consideration may be given to companies that locate or expand in rural areas or . . . companies that have agreed to negotiate special hiring arrangements for lower income person in connection with a project.").

⁹ Kimberlee Leonard & Rob Watts, *The Ultimate Guide to S.M.A.R.T. Goals*, FORBES, <https://www.forbes.com/advisor/business/smart-goals/> (last updated May 4, 2022).

¹⁰ Draft EJ Goals, *supra* note 6, at Goal 1.

¹¹ N.C. DEP'T OF COMMERCE, CLIMATE CHANGE WORKFORCE DIVERSITY REPORT: RECOMMENDATIONS TO GROW A DIVERSE AND TALENTED WORKFORCE TO ADDRESS THE IMPACTS OF CLIMATE CHANGE 2 (Dec. 2022), <https://www.commerce.nc.gov/report-climate-change-workforce-diversity/download?attachment>; see Executive Order 246, North Carolina's Transformation to a Clean, Equitable Economy (Jan. 7, 2022).

The Climate Change Workforce Diversity Program was created under a previous executive action, Executive Order 246.¹² While the plan contains a number of laudable recommendations that may address environmental injustices, the Department must use the directives of EO 292 to create new policies and actions to advance environmental justice, and not to merely recommit to previous obligations.

The Department should provide more details in its final goals about the “Smarter NC” grant itself and describe exactly how “supporting” employers in this specific program will advance environmental justice in North Carolina. Outside of the two sentences provided in the Department’s goals, it is totally unclear what the “Smarter NC” grant program is.¹³ Given the jurisdiction of the Department, supporting 50 employers in two areas of the state under an existing program, which is seemingly run by another state entity, could be meaningful, but may be too limited. Moreover, it is not clear what the Department’s “support” will entail or what the specific outcome will be.

Overall, there are a number of questions draft Goal 1 leaves unanswered. For example, what are “two areas of the state” where the grant’s efforts will be “focus?” What specific activities are the funds intended to support? What role does “workforce recruitment” play in the grant? How will the 50 employers be identified? Lastly, what specific activities will the Department undertake to support these 50 employers in building a talent pipeline? It is also unclear how the Department will measure or report its achievement of this goal to the public.

We also discourage the Department from conflating climate change and environmental justice. As written, the connection is ambiguous. The Department’s final goals should describe how “building a pipeline in the electric vehicle/advanced manufacturing space” will advance environmental justice or serve EJ communities.

Alternatively, we encourage the Department to replace this goal with a commitment to create a state-wide program to support employers to build a pipeline for green jobs in EJ communities. The Department’s seemingly ongoing work with the “Smarter NC” program can be used as a model. Recognizing that resources may be a limiting factor to such an initiative, we alternatively, propose the Department commit to design and seek funding for such a program.

¹² N.C. DEP’T OF COMMERCE, CLIMATE CHANGE WORKFORCE DIVERSITY REPORT, *supra* note 11, at 2 (“Importantly, in Section 12, [Executive] Order [246] calls for the creation of a workgroup to develop a report with strategies to diversify the occupations and industries that are critical to understanding and addressing climate change.”).

¹³ We were unable to find any additional information about the Smarter NC program on the Department of Commerce website, North Carolina State University’s website, or elsewhere online.

II. The Department Must, at a Minimum, Modify Draft Goal 2 to Create a More Inclusive Web Presence

We request that the Department modify draft Goal 2 to specify actions it will take to create a more inclusive digital presence. The Department’s draft Goal 2 states:

The NC Department of Commerce consists of several public facing divisions that connect residents to job seeker services, unemployment services, business or community grants, and data and information. Where relevant, the Department will update resources on public facing websites to include information and/or resources in multiple languages. The Department will collaborate with the Office of the Governor, partners engaged in the North Carolina Digital Access and Equity grant project, and state agencies to leverage resources to make information more accessible to diverse populations.¹⁴

As written, it is unclear how the actions proposed under draft Goal 2 will meaningfully advance environmental justice. Translating webpages and documents is helpful to impacted community members who know of the website’s existence and the resources it houses. However, translating interfaces does not redress the injustices fostered by ongoing department actions.

If this goal is to remain, we propose the Department specify the ways in which it will advance digital inclusivity. While we acknowledge that the definition of “environmental justice” in EO 292 does not include disability as a protected class,¹⁵ the Department’s digital inclusivity efforts should consider accessibility to all.

Digital inclusivity encompasses both the structural design of the website as well as the material or content being shared.¹⁶ Implementing inclusive and accessible websites demonstrates respect for all people, promotes equity, and empowers underserved communities.¹⁷ An inclusive site removes bias and assumptions so that all users will be able to acquire the same information, complete the same tasks, and use the

¹⁴ Draft EJ Goals, *supra* note 6, at Goal 2.

¹⁵ Compare Exec. Order No. 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All § 2(b) (Apr. 21, 2023), <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all> (“‘Environmental justice’ means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or *disability*, in agency decision-making and other Federal activities that affect human health and the environment.” (emphasis added)) to Executive Order 292 § 6(e).

¹⁶ INTERACTION DESIGN FOUND., WHAT IS DIGITAL INCLUSION?, https://www.interaction-design.org/literature/topics/digital-inclusion#the_foundations_of_digital_inclusion-1 (last visited Apr. 1, 2024).

¹⁷ Efua Andoh, *Why Inclusive Language Matters*, AM. PSYCH. ASS’N: PSYCH. STUDENT NETWORK (Sept. 2022), <https://www.apa.org/ed/precollege/psn/2022/09/inclusive-language>.

same services.¹⁸ This is especially true in the public sector: the needs of all people in the public must be considered to ensure they can find, understand, and access public services.¹⁹

Therefore, digital inclusivity requires more than translating content into multiple languages. To create an inclusive website with equitable outcomes for all users, web designers must consider not only language barriers but also physical impairments (vision, hearing, and/or dexterity), cognition and speech abilities, temporary situational limitations, computer literacy, demographic differences such as age, race, and gender, and socioeconomic differences.²⁰ Structurally this could include the implementation of assistive technologies with customizable interfaces, such as magnification tools, color customization, and display orientation, voice-to-text capabilities, captions or transcripts for video/audio content, autocomplete fields, or visible text labels that help make a website user-friendly to people of diverse backgrounds and abilities.²¹

In addition to the accessibility of the website's design, web creators must also promote inclusivity by ensuring content is accessible to diverse audiences through its language. Authors should use inclusive language that is bias-free, avoids stereotypes, and is culturally appropriate.²² Content creators for public-facing websites should also choose to acknowledge the power imbalances of our society and show appreciation for the variety of perspectives diversity brings.²³ For these reasons, the Department should evaluate its current platforms for specific areas of improvement related to accessibility and utilize a variety of tools, from structural website design to inclusive language, to increase the inclusivity and accessibility of public-facing websites.

¹⁸ See Bianca Belman-Adams, *What Is Inclusive Web Design?*, ELEMENTOR BLOG (Apr. 28, 2022), <https://elementor.com/blog/inclusive-web-design/>; see also AM. PSYCH. ASS'N, INCLUSIVE LANGUAGE GUIDE 15 (2023), <https://www.apa.org/about/apa/equity-diversity-inclusion/language-guide.pdf> [hereinafter APA Language Guide].

¹⁹ See U.S. GEN. SERVS. ADMIN., EMBEDDING EQUITY IN CIVIC DESIGN TO TRANSFORM CUSTOMER EXPERIENCE, <https://digital.gov/resources/embedding-equity-in-civic-design-to-transform-customer-experience/> (last viewed Apr. 1, 2024).

²⁰ See Belman-Adams, *supra* note 18.

²¹ HARV. UNIV., DIGITAL ACCESSIBILITY: ASSISTIVE TECHNOLOGIES, <https://accessibility.huit.harvard.edu/techniques/assistive-technologies?page=1> (last visited Apr. 1, 2024).

²² See *generally*, APA Language Guide, *supra* note 18 (describing inclusive language in writing); see, e.g., APA Language Guide, *supra* note 18 at 9 (describing how to use person-first language to prioritize the person over their condition, such as “person with a disability” rather than “disabled person.”); see also Am. Psych. Ass'n, *Racial and Ethnic Identity*, APA STYLE, <https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/racial-ethnic-minorities> (last visited Apr. 1, 2024) (describing general principles for bias-free writing when discussing racial and ethnic identity); see also Am. Psych. Ass'n, *Racial and Ethnic Identity*, APA STYLE, <https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/gender> (last visited Apr. 1, 2024) (describing general principles for bias-free writing when discussing gender).

²³ See Andoh, *supra* note 17.

III. The Department Should Replace Draft Goal 3 with a Commitment to Address Environmental Injustices in its Incentives Programs

We support the Department's distribution of educational materials on environmental justice to businesses that may be less informed, as well as the proposed reports. However, the Department must be more ambitious in a goal related to its grantmaking authority. Draft Goal 3 states:

The mission of the Department of Commerce is to improve the economic well-being and the quality of life for all North Carolinians. We connect businesses with the site locations, workforce, and infrastructure they need to succeed in one of the nation's top states for business. And our targeted, performance based incentive programs help companies and communities grow and thrive in our state. We also connect local communities with the grants and funding they need to attract new business and ensure future prosperity.

In our role as connector, funder, and grantor, Commerce communicates topics of interest and relevance to both businesses and local communities seeking resources from the Department. To increase awareness of Environmental Justice concepts, Commerce will include information on the EJ Toolkit for Businesses in all incentive proposals. The Department will report to the Advisory Council the number of proposals provided for economic development projects each year as well as the number of projects that have been announced each year. The timelines for these reports will be aligned with existing reports already provided to the NCGA by the Department.²⁴

Distributing information to grant applicants is a modest initial step to ensure that companies and local communities are equipped, on their own, to address potential environmental injustices in their activities. However, the Department should take a more affirmative role in ensure grant funds do not contribute to environmental injustices.

The Department should set a goal to evaluate opportunities to consider environmental justice impacts in incentive programs instead of merely informing potential recipients about their environmental justice impacts. We understand that the Department does not always have the discretion to set the criteria for scoring grant applications. However, such discretion does exist for some grant programs. For example, the One North Carolina Fund is a discretionary cash-grant program administered by the Department of Commerce that allocated funding "to local

²⁴ Draft EJ Goals, *supra* note 6, at Goal 3.

governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses.”²⁵

The General Statutes provide the Department the discretion to attach “any” provision to a funding agreement that the Department “finds necessary to ensure the proper use of State of local funds.”²⁶ The Department also has discretion to consider environmental impacts of an applicant’s project.²⁷ Given the latitude this program provides in award cash-grants to private companies, the Department should set a goal in include environmental justice-related criteria in this grant program and evaluate where such criteria can be included in other discretionary grant programs.

We encourage the Department to create new EJ goals that build upon the requirements in EO 292. EO 292 requires the Department of Commerce and the Department of Environmental Quality (“DEQ”) “deliver a report to the Governor and to the Council regarding businesses who have been awarded Job Development Investment Grant (“JDIG”) incentives since January 1, 2017, and have also been issued notice of violations from DEQ.”²⁸ The Department should create a goal to consider these past environmental violations in future grant application decisions. The Department should not continue to provide grants to companies with a history of permit violations.

In addition to the report required under EO 292, the Department should set a goal to work with DEQ to publish reports regarding businesses who have received One North Carolina Fund, or any other discretionary fund, incentives, and have also been issued notice of violations from DEQ. Recipients of JDIG incentives are likely not the only grant recipients who violate their environmental permits. These reports could provide an opportunity for the public, specifically the impacted EJ communities surrounding these operations, to be made aware of environmental harms resulting from the Department’s economic incentives. Moreover, these reports could provide the Department with data on potential environmental impacts that could be used to evaluate future grant applications.

Economic development should not come at the expense of EJ communities that are already disproportionately burdened with environmental harms. EO 292 directs

²⁵ N.C. Gen. Stat. § 143B-437.71(b).

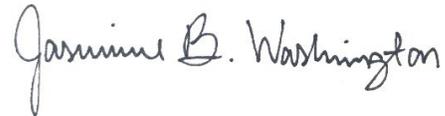
²⁶ *Id.* § 143B-437.72(b)(8). While the “[r]elease of grant funds is contingent on the company receiving all of its required environmental permits,” we implore the Department acknowledge that environmental injustices often arise from the cumulative impacts of environmental permitting decisions. Therefore, the Department should use the environmental permitting process as cover from considering environmental justice impacts under the One North Carolina Fund.

²⁷ N.C. Dep’t of Commerce, *supra* note 8, § 6.4(e) (2016), <https://www.commerce.nc.gov/guidelines-one-north-carolina-fund-onenc/open> (“[T]he following factors are among those that may be considered: (1) Nature of business to be conducted at site. (2) Ability of project to satisfy state, federal and local environmental laws and regulations.”).

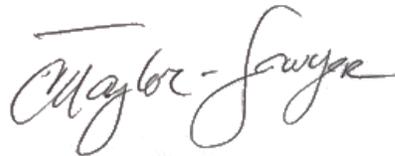
²⁸ Exec. Order No. 292 § 12.

cabinet agencies to consider and address environmental justice impacts in their practices. Therefore, we ask the Environmental Justice Advisory Council and the Department of Commerce to consider the revisions and additional goals provided herein.

Sincerely,



Jasmine Washington
Associate Attorney
jwashington@selcnc.org

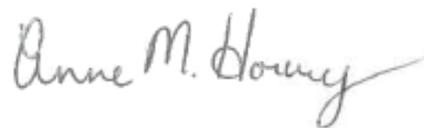


Chandra Taylor-Sawyer
Senior Attorney
ctaylor@selcnc.org

SOUTHERN ENVIRONMENTAL LAW CENTER
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516
919-967-1450



James Huey
Counsel for Environmental Justice
james@scsj.org



Anne Harvey
Chief Counsel for Environmental Justice
anne@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE
P.O. Box 51280
Durham, NC 27727
919-323-3380

cc (via e-mail):

Jennifer Mundt
Jennifer.Mundt@commerce.nc.gov

Daisha Wall
daisha@cleanairenc.org

Evin Grant
evin.grant@doa.nc.gov

Justin Duncan
justin.l.duncan@dac.nc.gov

Dr. Rebecca Witter
rebecca.witter@gmail.com

Naeema Muhammad
naeema1951@gmail.com

On Behalf of:

Omega and Brenda Wilson
Co-Founders/Directors
West End Revitalization Association

Dr. Crystal Cavalier
CEO
Seth Harris
Programs Director
7 Directions of Service

Danielle Koonce

Yesenia Cuello
Executive Director
NC FIELD, Inc.

Hannah Connor
Environmental Health Deputy Director
Center for Biological Diversity

Rania Masri
Co-Director
North Carolina Environmental Justice
Network

Scott Schang
Director
Wake Forest Environmental Law and
Policy Clinic

Jefferson Currie II
Lumber Riverkeeper
Winyah Rivers Alliance

Grace Fitzgerald
Community Project Manager
McDowell Local Food Advisory Council

Lindsay Savelli
Program Manager
UNC Environmental Justice Action
Research Clinic

Vicki Lee Parker-High
Executive Director
North Carolina Sustainable Business
Council

Erin Carey
Acting Director
NC Sierra Club

Jeff Robins
Executive Director
CleanAIRE NC

Kendall Wimberley
Policy Advocate
Toxic Free NC

Khrystle Bullock-Sam
Working Group Member
NC Black and Green Network

Caroline Armijo
Director
The Lilies Project

Deborah Maxwell
President
North Carolina NAACP

Jaelyn Miller
Staff Attorney
Emancipate NC

James Smith
President
Duplin County Branch of NAACP

Will Hendrick
Environmental Justice Director
North Carolina Conservation Network

Bobby Jones
President
Down East Coal Ash Environmental and
Social Justice Coalition

Christopher Taylor
Equitable & Economic Engagement
Coordinator
Neighbors for Better Neighborhoods

Adam Colette
Programs Director
Dogwood Alliance

Denise Robinson
Deputy Executive Director
Environmental Justice Community
Action Network