



July 1, 2026

Casey Sixkiller, Director
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
casey.sixkiller@ecy.wa.gov

Re: Request for Corrective Action Regarding Ecology's Race- and Ethnicity-Conscious Environmental Justice, Community Compensation, Grantmaking, and Enforcement Practices

Dear Director Sixkiller:

The Washington Department of Ecology's (the "Department") current environmental justice and community compensation programs appear to discriminate against individuals on the basis of race, ethnicity, color, and/or national origin. The Department receives significant financial assistance from the United States Environmental Protection Agency ("EPA"), thereby creating a legal obligation on the part of the Department to comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964 and EPA's implementing regulations. Additionally, state agencies like the Department are government actors, and are therefore bound by the Fourteenth Amendment to the United States Constitution. Discriminatory treatment on the part of the Department, as outlined herein, violates Title VI, the EPA's regulations, and the Equal Protection Clause of the Fourteenth Amendment.

The America First Policy Institute ("AFPI") is a nonpartisan, nonprofit research institute dedicated to putting the American worker and family first. Our guiding principles include liberty, free enterprise, and the primacy of American workers, families, and communities in all we do. The Department's current programs and policies are deeply concerning because they appear to provide benefits, access, and influence to only certain individuals and organizations based on race-, ethnicity-, color-, national-origin-, and other identity-conscious criteria. While the Department seeks to interact with the public and consider the interests of Washingtonians in making environmental decisions—a commendable priority—the Department appears to have designed an elaborate scheme that delivers, and operates on the basis of, a singular, radical viewpoint as representative of all Washingtonians.

The Department’s programs and policies have created a compensation and engagement system that provides benefits and preferred access to individuals and groups with certain characteristics—such as membership in an “overburdened community,” status as a “vulnerable population,” “lived experience,” affiliation with “historically excluded” or “historically underrepresented” communities, or representation through a “for and by” organization—while failing to provide the same benefits and access to other Washingtonians who are directly affected by the Department’s programs, policies, and enforcement decisions.

That framework is fundamentally unfair and is legally vulnerable.

I. The Department of Ecology receives federal financial assistance from EPA, which subjects its programs to Title VI

The Department receives financial assistance from EPA for its Air Quality, Water Quality, and Hazardous Waste and Toxics Reduction programs. Ecology’s Environmental Performance Partnership Agreement with EPA identifies Air Quality, Water Quality, and Hazardous Waste and Toxics Reduction as the three primary Department programs receiving EPA grant funds and lists estimated two-year EPA grant amounts of \$7,535,000 for Air Grants, \$11,430,990 for Water Grants, and \$3,400,000 for Hazardous Waste/RCRA.¹

Title VI of the Civil Rights Act of 1964 provides that no person in the United States may, “on the ground of race, color, or national origin,” be “excluded from participation in,” “denied the benefits of,” or “subjected to discrimination under” any program or activity receiving federal financial assistance.² The Equal Protection Clause of the Fourteenth Amendment also prohibits state agencies from discriminating on the same bases.³ Similarly, EPA’s implementing regulations prohibit a recipient of EPA assistance, directly or through contractual, licensing, or other arrangements, from taking actions on the basis of race, color, national origin, or sex that include denying benefits, providing different benefits, restricting the enjoyment of benefits, subjecting a person to separate treatment, or denying any person or group the opportunity to participate as members of a planning or advisory body that is an integral part of the federally assisted program.⁴ EPA’s regulations further prohibit a recipient from using criteria or methods of administering its program or activity that have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex, or that substantially impair the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.⁵

The Department’s current framework for providing benefits, compensation, and preferred access to certain members of the public and community groups appears to violate these provisions.

¹ Environmental Performance Partnership Agreement Between the Washington State Department of Ecology and the United States Environmental Protection Agency, State Fiscal Years 2026–2027, Publication No. 25-04-032.

² 42 U.S.C. § 2000d.

³ U.S. Const. amend. XIV, § 1.

⁴ 40 C.F.R. § 7.35(a).

⁵ 40 C.F.R. § 7.35(a).

II. Washington’s HEAL Act and CCA implementation incorporate race and ethnicity into environmental management programs

Washington’s Healthy Environment for All Act (“HEAL Act”) requires covered agencies, including the Department, to incorporate environmental justice into agency decision-making.⁶ The HEAL Act defines “environmental justice” as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income” with respect to environmental laws, rules, and policies. But the statute further provides that environmental justice includes addressing disproportionate environmental and health impacts by prioritizing “vulnerable populations” and “overburdened communities.”⁷

The HEAL Act’s definitions expressly incorporate race and ethnicity. “Overburdened community” means “a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts,” and includes, but is not limited to, highly impacted communities.⁸ “Vulnerable populations” expressly includes “racial or ethnic minorities,” “low-income populations,” “populations disproportionately impacted by environmental harms,” and “populations of workers experiencing environmental harms.”⁹

The Climate Commitment Act (“CCA”) likewise embeds the same framework into funding and program administration. For relevant accounts and programs, the CCA requires agencies to conduct environmental justice assessments and establish a minimum of not less than 35 percent—and a goal of 40 percent—of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.¹⁰ The CCA further provides that benefits and programs should be directed to areas and targeted to vulnerable populations and overburdened communities to reduce statewide disparities, and that efforts should contribute to reducing disparities that exist based on “race or ethnicity, socioeconomic status, or other factors.”¹¹

Pulling from the terminology set forth in the HEAL Act and the CCA, the Department has pursued implementation plans that place race and ethnicity at the center of program design, investment priorities, community engagement, grantmaking, and policy development. This is unconstitutional.

The Department’s Community Engagement Plan (the “Plan”) states that it fulfills its HEAL Act obligation to create and adopt a community engagement plan describing how the Department will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs.¹² The Plan is not limited to a single Department program; instead,

⁶ RCW 70A.02.020; RCW 70A.02.050; RCW 70A.02.060.

⁷ RCW 70A.02.010(8).

⁸ RCW 70A.02.010(11).

⁹ RCW 70A.02.010(14)(b)(i)-(iv).

¹⁰ RCW 70A.65.230.

¹¹ RCW 70A.65.230.

¹² Washington State Department of Ecology, Community Engagement Plan, Publication No. 26-01-008.

it states that the Department’s environmental programs are responsible for implementing the Community Engagement Plan at both the programmatic and project levels.¹³

The Plan applies broadly to the Department’s work, and identifies engagement in connection with public comment periods, meetings, hearings, advisory groups and workgroups, grant and loan program administration, spills prevention and response, environmental monitoring and data collection, environmental education and outreach campaigns, water rights adjudications, and other activities.¹⁴

The Plan also identifies compensation for community engagement as a barrier-reduction strategy. It directs the Department’s project teams to “compensate community member time and expertise” under the Department’s Lived Experience Compensation Guidelines.¹⁵ Accordingly, the Department’s framework is not merely about general outreach. It appears designed to influence agency planning, grantmaking, monitoring, data collection, advisory processes, rulemaking, policymaking, and enforcement-adjacent priorities across the Department’s programs, including EPA-funded programs. All of this is done through a lens that prioritizes certain races, skin colors, and ethnicities by affording uneven access and influence on those bases.

III. The Department of Ecology’s compensation guidelines target only certain individuals for paid participation in planning and advisory processes

Washington’s Community Compensation Guidelines authorize agencies to provide stipends and allowances to individuals for participating in agency workgroups if they are low-income or have “lived experience” with the issues addressed by those workgroups.¹⁶

The Guidelines define “lived experience” as “direct personal experience in the subject matter being addressed by the board, commission, council, committee, or other similar group.” But the Guidelines then state that workgroups should partner with people who are part of “historically excluded communities” and those “disproportionately impacted by policies, processes, and systems” that the workgroup seeks to address.¹⁷ This alternative framework delineating who is eligible for compensation results in a system that requires a heightened burden for participation on the part of Washingtonians who are not members of “historically excluded communities.” If you are a member of a “historically excluded community,” then you are eligible for compensation under the guidelines. However, if you are not, then you must also be “low income” in order to qualify for compensation. This is textbook preferential treatment, which constitutes unlawful discrimination.

The Guidelines further instruct agencies to work with organizations that have developed trusting relationships with “historically underrepresented communities.” When seeking to partner with

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ RCW 43.03.220; Washington State Office of Equity, Community Compensation Guidelines, Version 1.1.

¹⁷ Washington State Office of Equity, Community Compensation Guidelines, Version 1.1.

specific demographics, the Guidelines instruct agencies to seek “for and by organizations”—meaning organizations “established for the people and by the people most impacted.”¹⁸ The Guidelines also require agencies to track and report demographic and fiscal information related to community compensation. The demographic information must include, at minimum, the most recent calendar year in which the person participated in a group, race, ethnicity, income, and county. The Guidelines further require fiscal tracking of “Stipends – lived experience” and “Other allowances – lived experience.”¹⁹

The activities eligible for compensation are broad and substantive. They include attending official meetings, community feedback sessions, travel time, reviewing and commenting on plans, producing or reviewing written content such as research or reports, meeting preparation, outreach meetings, conferences, trainings, and other one-time events.²⁰ Agencies may also compensate one-time engagement activities such as surveys, interviews, written feedback requests, and other low-barrier engagement opportunities.²¹

This structure creates serious legal concerns. The Department is not merely removing neutral barriers to participation. The Department appears to be selecting and compensating certain participants based on identity-conscious criteria, tracking the race and ethnicity of compensated participants, and then using those compensated participants’ views, experiences, recommendations, survey responses, written feedback, and advisory input to shape public policy.

Not everyone is asked to weigh in or paid to weigh in. Not everyone is given the same opportunity to shape the Department’s decisions. The system is designed to elevate some voices while excluding others, all on the basis of constitutionally protected characteristics.

IV. The Department of Ecology’s framework appears to exclude certain groups of Washingtonians from equal access and equal influence

The Department makes decisions that affect Washingtonians across the state. Those affected include farmers, ranchers, landowners, workers, small businesses, and regulated entities. The Department’s programs and enforcement decisions can affect standards relating to water quality, nonpoint-source pollution, wetlands, buffers, air quality, hazardous waste, toxics reduction, climate investments, and other matters central to the livelihoods of Washington families and businesses.

The broad impact of the Department’s framework makes it all the more concerning that the provision of benefits, compensation, and preferred opportunities for engagement and policy deliberations are made to individuals and organizations based on the possession of specific characteristics—such as race, ethnicity, color, national origin, membership in an overburdened

¹⁸ Id.

¹⁹ Id.; RCW 43.03.2705.

²⁰ Washington State Office of Equity, Community Compensation Guidelines, Version 1.1.

²¹ Id.

community, status as a vulnerable population, affiliation with a “for and by” organization, “lived experience” in certain environmental topics, or association with historically excluded or historically underrepresented communities. At the same time, the Department’s framework does not provide comparable paid participation opportunities to Washingtonians who do not meet the same race- and ethnicity-based criteria, but whose livelihoods are nonetheless directly affected by the Department’s decisions.

That structure is both fundamentally unfair and legally suspect. It creates a system in which the Department pays selected participants to help shape agency priorities, while other affected Washingtonians are left outside the compensated advisory and policy-setting structure, having had no opportunity or a much more limited opportunity to influence the system. In practice, this structure creates an activist enforcement pipeline in which selected groups are funded, elevated, and invited to influence monitoring, policy, grantmaking, and enforcement priorities, while other Washingtonians bear the resulting regulatory burdens without equal access to the process.

V. The Department of Ecology should take corrective action

In light of these concerns, we request that the Department take corrective action to ensure that its programs are established and administered in a manner that does not discriminate against any person on the basis of race, ethnicity, color, or national origin. To accomplish that goal, the Department should:

1. Ensure that no participant in any Department program, engagement process, workgroup, advisory body, grant program, monitoring process, policy process, or enforcement-adjacent process is selected, compensated, preferred, or provided benefits on the basis of race, ethnicity, color, national origin, status as a member of an overburdened community, status as a member of a vulnerable population, status as a member of a historically excluded or historically underrepresented community, status as a “for and by” organization, or similar identity-conscious criteria;
2. Revise all Department plans, guidelines, policies, and management structures that provide for the selection or compensation of members of these groups to ensure that all Washingtonians affected by the Department’s programs have an equal opportunity to participate in Department decisions, plans, programs, initiatives, and workgroups;
3. Ensure that any guidelines for community compensation use neutral, nondiscriminatory eligibility criteria and do not use race-, ethnicity-, color-, or national-origin-conscious criteria for providing benefits, compensation, or opportunities;
4. Prohibit the Department’s contractors, grantees, subgrantees, nonprofits, community-based organizations, fiscal intermediaries, third-party administrators, and other partners from using race-, ethnicity-, color-, or national-origin-conscious criteria for selecting, inviting, prioritizing, screening, or compensating participants in Department initiatives, programs, plans, decisions, surveys, interviews, written-feedback processes, and workgroups;

5. Review all Department grant programs, including HEAL Act, CCA-funded, and EPA-assisted programs, to ensure that eligibility criteria, scoring criteria, award decisions, community-benefit requirements, environmental justice assessments, and reporting requirements do not use race- or ethnicity-conscious criteria in a manner that provides unequal benefits or opportunities;
6. Review all workgroups, advisory groups, environmental justice assessments, public surveys, interviews, one-time engagement activities, environmental impact assessments, and other initiatives undertaken by the Department to determine whether any individual or group has been denied equal benefits or equal opportunity to participate;
7. Make publicly available records sufficient to allow review of whether the Department has complied with its responsibilities to all Washingtonians, including records concerning community compensation, lived-experience compensation, gift cards, prepaid cards, Z460/Z461 accounting codes, demographic tracking, participant-selection criteria, engagement plans, environmental justice assessments, grant-scoring rubrics, third-party administrators, and community-based organization partners;
8. Provide written assurance that the Department will not create, implement, or administer any program, initiative, grant, engagement process, or compensation system based on race-, ethnicity-, color-, or national-origin-conscious criteria.

We request that the Department provide a written response within thirty days and preserve all records relating to the subject matter of the requests set forth in this letter.

The Department's mission is to preserve and protect Washington's environment for all Washingtonians. That mission is not advanced by establishing benefits, opportunities, and compensation for only some Washingtonians while excluding others from equal participation in the Department's decisions.

Respectfully,

Leigh Ann O'Neill

Leigh Ann O'Neill
Chief Legal Affairs Officer
America First Policy Institute