

April 24, 2023

Committee on Environment and Natural Resources  
c/o Office of Fiscal and Program Review  
5 State House Station  
Augusta, ME 04333

**RE: Support of LD 1621, An Act to Regarding Environmental Justice, with improvements**

Dear Senator Brenner, Representative Gramlich, and other members of the Committee,

My name is Steve Clemmer, Director of Energy Research in the Union of Concerned Scientists (UCS) Climate and Energy Program. UCS is the nation's leading science based non-profit organization with more than a half a million supporters, including more than 2,500 in Maine. On behalf of UCS, I offer this testimony in support of LD 1621 with improvements (as specifically detailed in the attached Exhibit A).

In addition to testifying in support of LD 2018 last year, I participated in the subsequent Maine Public Utilities Commission (PUC) proceeding to prioritize funding to encourage greater participation by environmental justice groups and disadvantaged communities in PUC proceedings, submitting joint comments with other environmental, community-based, and youth groups.<sup>1</sup> I also participated in the virtual public forums organized by the Governor's Office on Policy Innovation and the Future (GOPIF), which incorporated feedback from diverse stakeholders that attended those forums into their February 2022 report to the legislature.<sup>2</sup>

My comments on LD 1621 are also informed by work UCS is doing in collaboration with environmental justice, frontline, and disadvantaged communities in other states and at the federal level. This includes being a co-author and original signatory of the Equitable and Just National Climate Platform, which has been signed by 324 organizations.<sup>3</sup>

UCS has supported the creation of state-specific definitions of environmental justice populations in many of these efforts. However, we're concerned that the current version of LD 1621 is not likely to result in a durable and effective state-specific definition without significant improvements.

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<sup>1</sup> Joint Supplemental Comments of Conservation Law Foundation, Union of Concerned Scientists, Natural Resources Defense Council of Maine, Acadia Center, Maine Conservation Voters, Maine Climate Action Now, and Slingshot. Amendments to Intervenor and Participant Funding Rule (Chapter 840), Docket No. 2022-00299, November 21, 2022. Online at: <https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/ViewDoc.aspx?DocRefId={0DDF9B3A-9F16-47A0-B1C5-E1871356F2B8}&DocExt=pdf&DocName={0DDF9B3A-9F16-47A0-B1C5-E1871356F2B8}.pdf>

<sup>2</sup> Governor's Office of Policy Innovation and the Future Report on Equity Considerations in Decision Making Pursuant to An Act To Require Consideration of Climate Impacts by the Public Utilities Commission and To Incorporate Equity Considerations in Decision Making by State Agencies, Online at: <https://www.maine.gov/tools/whatsnew/attach.php?id=6869935&an=1>

<sup>3</sup> <https://ajustclimate.org/index.html>

Exhibit A below includes several recommended changes and improvements to the bill language drawing on our experience and best practices from other states. The four main improvements include:

- 1) modifying some of the existing definitions to be more inclusive,
- 2) adding new definitions for environmental benefits, environmental burdens, environmental justice principles, and environmental justice populations,
- 3) requiring DEP to establish an Environmental Justice Advisory Council, and
- 4) requiring DEP to create an Environmental Justice Community Engagement Plan.

As discussed in our November 2022 joint intervenor funding comments to the PUC, there is not one single definition of “environmental justice populations” that will be uniformly applicable across every state seeking to define the term. The definition should reflect the on-the-ground reality of geographic areas that are: underserved by the current infrastructure, markets, and laws; lacking access to environmental benefits; and overburdened by pollution, infrastructure, and climate impacts. The definition should be based on demographic factors including race, income, and limited English proficiency. In some circumstances, it will be appropriate to exclude high-income communities that are encapsulated by other indicators (although we caution that communities generally perceived as wealthy are often not exclusively so). The definition should also include an opt-in provision that allows some flexibility for designation of neighborhoods that meet certain criteria. Any definitions and thresholds used should be carefully informed by resident input and local knowledge.

At least eight other states, including six in the Northeast (CT, MA, NJ, NY, RI and VT), have adopted specific definitions of environmental justice populations. Based on analysis by the Conservation Law Foundation, we laid out four possible state specific definitions of environmental justice populations for the Commission to consider in our joint comments using criteria for income, race, and English proficiency that would cover an estimated 32% - 57% of the Maine’s population. We support using a broader, more inclusive definition of environmental justice populations in LD 1621 that would cover an estimated 52% of Maine’s population. Using this definition, Maine would be among the regional leaders in coverage of its population, comparable with Vermont at 55% and New Jersey at 51%.

The federal government also provides approaches to identifying environmental justice populations in different contexts. However, we caution against wholesale adoption of those definitions as we find them deficient in multiple regards—principally, for failing to use race as an indicator—and in any case, they are not designed to account for Maine’s specific demographic composition.

We do not believe a state specific definition will conflict with the federal definition and Justice40 initiative goal that at least “40 percent of the overall benefits of certain federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution.”<sup>4</sup> This federal program effectively serves as a floor that states can build on. A state specific definition will allow Maine to target supplemental funding at populations not covered by the federal definition.

We believe these improvements to the bill will enhance the participation and contribution of more diverse perspectives in state agency decision making that will result in stronger and better-informed decisions and improve services for all communities. We also believe that more robust processes and upfront opportunities for engagement may lead to greater public support and buy-in to the results, lowering regulatory risk by obviating or reducing the need for subsequent challenges to agency decisions.

Thank you for the opportunity to testify on LD 1621.

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<sup>4</sup> <https://www.whitehouse.gov/environmentaljustice/justice40/>

Exhibit A: UCS recommended improvements to LD 1621

1       **Be it enacted by the People of the State of Maine as follows:**

2               **Sec. 1. 38 MRSA §349-C** is enacted to read:

3       **§349-C. Environmental justice**

4               **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6               A. “Environmental justice” means the fair treatment and meaningful involvement of  
7 all people regardless of race, color, national origin, *ability, gender identify, sexual*  
*orientation, ethnicity or ancestry, religious belief, English language proficiency, or*  
income with respect to the development, implementation and enforcement of  
environmental laws, rules, regulations and policies. *Environmental justice seeks to*  
*ensure the equitable distribution of environmental benefits, protection from*  
*environmental and health hazards, and access to the decision-making process to have a*  
*healthy environment in which to live, learn, and work.*

8               B. “Fair treatment” means that no group of people bears a disproportionate share of  
9 the negative environmental *harms consequences* resulting from industrial,  
governmental or  
10 commercial operations or policies, *and climate impacts.*

11               C. “Frontline communities” means those people and communities that experience the  
12 consequences of climate change first and to a greater degree than other people and  
13 communities.

14               D. “Meaningful involvement” means, with respect to the department’s decision-making  
15 process, that:

16                       (1) People and communities have an opportunity to participate in the  
17 decision-making process regarding activities that have the potential to affect the  
18 environment or public health;

19                       (2) The department seeks out and facilitates the involvement in the  
20 decision-making process of potentially affected people and communities;

21                       (3) The contributions of people and communities to the decision-making process  
22 can influence the department’s decision making; and

23                       (4)The department *shall address considers* in its decision making the concerns  
and contributions of people and communities provided as part of the decision-  
making process, *as well as any cumulative impacts on those people and communities.*

*E. “Environmental benefits” means the access to clean natural resources, including air,*  
*water, open space, and outdoor recreational facilities and venues; healthy homes and*  
*buildings; community revitalization, ecological restoration, clean energy access,*  
*resilience planning, environmental enforcement; and a just recovery for communities*  
*most affected by longstanding underinvestment, environmental burdens and extreme*  
*weather and climate-related disasters.*

*F. “Environmental burdens” means any destruction, damage or impairment of natural*  
*resources that is not insignificant, resulting from intentional or reasonably foreseeable*  
*causes, including but not limited to, climate change, air pollution, water pollution,*

improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to environmental benefits and natural resources, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, and open spaces from industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.

G. “Environmental justice principles” means principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, national origin, ethnicity or ancestry, ability, gender, identity, sexual orientation, religious belief, or English language proficiency, which includes: (i) the meaningful involvement of environmental justice populations with respect to the development, implementation and enforcement of environmental laws, regulations and policies; and (ii) the equitable distribution of environmental benefits and environmental burdens.

H. “Environmental justice populations” means a census block group (1) where the median annual household income does not exceed 80 percent of the state’s annual median household income (2) where people of color and/or indigenous people make up more than seven percent of the population, but where the annual median household income does not exceed 150 percent of the state’s annual median household income, or (3) where more than one percent of households are categorized as limited English proficient. For a census block group that does not meet said criteria, but a geographic portion of that census block group meets at least 1 criterion, the commissioner may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria.

24 **2. Consideration of environmental justice populations and frontline communities.**  
25 The department shall ensure that persons in environmental justice populations and frontline  
26 communities are provided with fair and equitable access to the department’s  
27 decision-making processes under section 341-H. *When the department makes decisions that*  
*have the potential to impact environmental justice populations concerning the development,*  
*implementation and enforcement of environmental laws, regulations and policies, it shall*  
*implement its community engagement plan at the beginning of any related process, effectively*  
*address community concerns before moving forward with a decision, and shall conduct and*  
*consider in its final decision a cumulative environmental benefits and environmental burdens*  
*analysis.* The department shall adopt rules establishing procedures to implement this  
subsection *no later than July 31, 2024.*

28 ~~A. — Rules adopted by the department pursuant to this subsection must define~~  
29 ~~“environmental justice populations,” taking into consideration, at a minimum, median~~  
30 ~~household income, race, ethnicity and English language proficiency.~~

31 ~~BA.~~ Rules adopted by the department pursuant to this subsection are routine technical  
32 rules as defined in Title 5, chapter 375, subchapter 2-A, except that the board shall hold  
33 a hearing in accordance with Title 5, section 8052 prior to the adoption of any rule  
34 proposed pursuant to this subsection.

### ***3. Environmental Justice Advisory Council.***

*By December 1, 2023, the department shall establish an Environmental Justice Advisory*

Council. The department shall consult with the Environmental Justice Advisory Council, which shall provide recommendations to the department in developing the rules to implement this section and its environmental justice community engagement plan. The Environmental Justice Advisory Council shall be comprised of at least 7 and no more than 9 members, with three appointed by the commissioner, four by the Speaker of the House, and the remainder by the Governor. Members of the Environmental Justice Advisory Council shall be well-informed regarding environmental justice principles and shall serve until the adoption of final rules and an environmental justice community engagement plan. The Advisory Council shall be comprised of environmental justice stakeholders including: scientific or other experts in environmental or public health matters holding academic position in colleges, universities or other research institutions and who work regularly in, or conduct substantial research regarding environmental justice concerns; representatives of the environmental nonprofit sector; representatives of conservation commissions or boards of health; residents or elected officials of Environmental Justice Population neighborhoods. No fewer than four of the persons appointed to the Advisory Council shall be residents of Environmental Justice Population neighborhoods within the state of Maine.

**4. Environmental Justice Community Engagement Plan.**

By July 31, 2024, the department shall create and adopt an environmental justice community engagement plan that describes how it will engage with environmental justice populations as it undertakes its decision making. The plan shall take into consideration the recommendations of the Environmental Justice Advisory Council. The plan shall describe how the department will provide meaningful involvement in the department's decision-making process.

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**Sec. 2. Appropriations and allocations.** The following appropriations and allocations are made.

1           **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

2           **Maine Environmental Protection Fund 0421**

3           Initiative: Provides one-time funding for facilitator services, travel expenses, facility  
4           rentals and meeting expenses.

|                                |                  |                |
|--------------------------------|------------------|----------------|
| 5 <b>GENERAL FUND</b>          | <b>2023-24</b>   | <b>2024-25</b> |
| 6           All Other          | \$150,000        | \$0            |
| 7                              |                  |                |
| 8           GENERAL FUND TOTAL | <u>\$150,000</u> | <u>\$0</u>     |

9           **Maine Environmental Protection Fund 0421**

10          Initiative: Provides funding for one Public Service Coordinator I position, 2 Law Clerk  
11          positions, one GIS Coordinator position and associated position costs.

|   |                  |                  |
|---|------------------|------------------|
| 12 <b>GENERAL FUND</b>                    | <b>2023-24</b>   | <b>2024-</b>     |
| 13          POSITIONS - LEGISLATIVE COUNT | 4,000            | 4,000            |
| 14          Personal Services             | \$210,522        | \$294,731        |
| 15          All Other                     | \$9,219          | \$12,292         |
| 16  |                  |                  |
| 17          GENERAL FUND TOTAL            | <u>\$219,741</u> | <u>\$307,023</u> |

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19          **ENVIRONMENTAL PROTECTION,**  
20          **DEPARTMENT OF**  
21          **DEPARTMENT TOTALS**

|  |                         |                         |
|--|-------------------------|-------------------------|
| 22                                     |                         |                         |
| 23 <b>GENERAL FUND</b>                 | <b>\$369,741</b>        | <b>\$307,023</b>        |
| 24                                     |                         |                         |
| 25 <b>DEPARTMENT TOTAL - ALL FUNDS</b> | <u><b>\$369,741</b></u> | <u><b>\$307,023</b></u> |

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**SUMMARY**

27           This bill enacts a provision that requires fair and equitable access to Department of  
28           Environmental Protection decision-making processes for environmental justice  
29           populations and frontline communities. The bill provides appropriations for various  
30           positions in the department and for facilitator services, travel expenses, facility rentals and  
31           meeting expenses.