



Oregon
Environmental
Council

Access to Justice and Sustainability:

A Summary of Recent Environmental Justice Efforts in Oregon

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Introductions - Who We Are

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What is Environmental Justice (EJ)?

U.S. EPA: “The fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”



EJ Is Dynamic, Long-Standing, and Intersectional

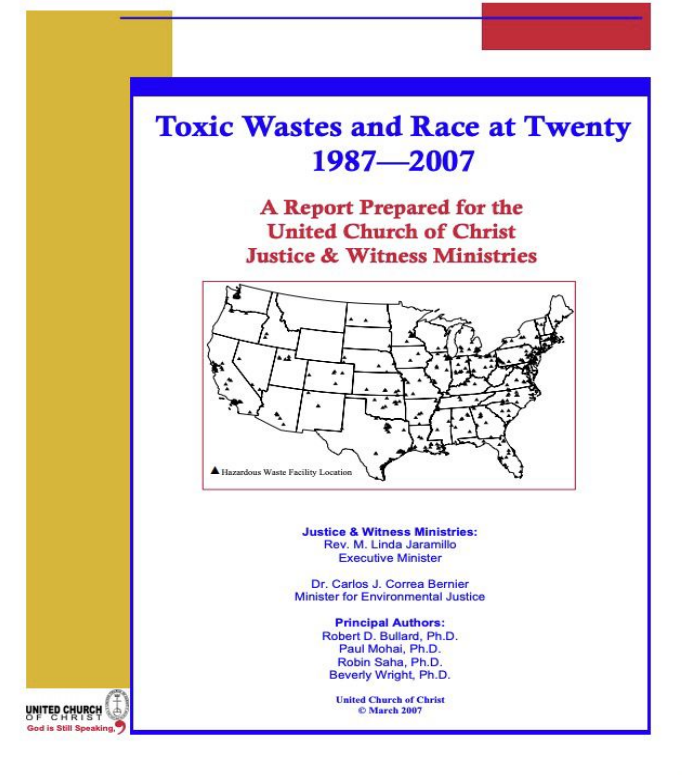
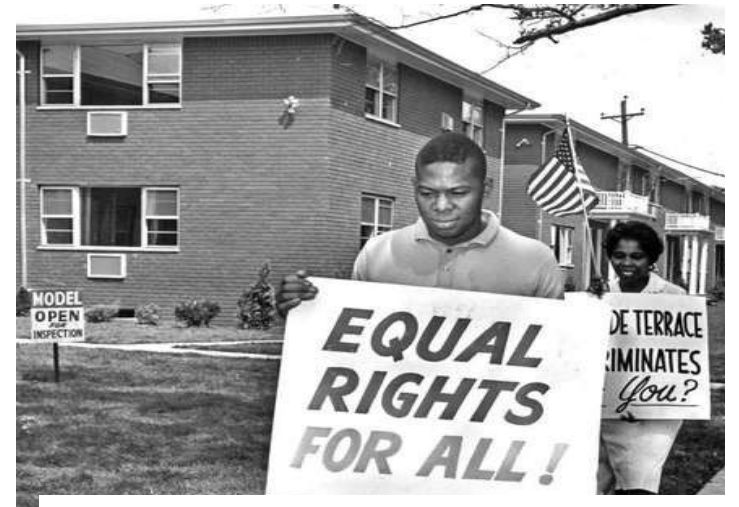
“For thousands of years, Native peoples have managed their resources, ensuring the strength of their people and shaping their distinctive cultural identities in the process. Today, however, it is often the case that these resources are managed by non-tribal governments.” - Darren Ranco, University of Maine (2011)



Opponents of the Dakota Access Pipeline in October 2016. Photo by [Rob Wilson \[GoFundMe\]](#)

Key EJ Moments in the U.S.

- **1950's-1990's:** Caesar Chavez and other farmworker rights activists push for equitable treatment of farmworkers.
- **1954-1968:** Civil Rights Movement.
- **1968:** Black sanitation workers in Memphis, TN go on strike to protest dangerous working conditions and low pay.
- **1969:** 19-month occupation of Alcatraz by indigenous activists demanding restorative justice, including the improvement of environmental infrastructures.
- **1970's-1980's:** Dr. Robert Bullard and other EJ activists begin studies correlating the link between toxic waste locations and race.



Key Federal and State EJ Laws and Orders (Ideally)



President Johnson signing the CRA,
1964

- **Title VI of the Civil Rights Act**
- **NEPA**
- **Clinton EO (12898)**
- **Biden EO's**
 - 14008
 - 14096
 - 14013
- **Gov. Brown EO (20-04)**
- **EPA EJ Priorities**
 - Grants
 - EPA EJ Screen Tool

Case study: Coffin Butte Landfill - Background



Image credit: Valley Neighbors for Environmental Quality and Safety
<https://coffinbuttefacts.org/petition/>

- Located in Benton County
- Originally opened as a WWII camp dump
- Now Oregon's 3rd largest landfill by tonnage
 - Permitted to accept 2,500 tons a day on average.
 - Total footprint is 740 acres including 40 acres of remedial wetlands that receive runoff from the landfill.
- Attempted a 30% expansion in 2021 that was denied by the County
 - Another attempt for expansion is expected in 2024

Community Public Health Concerns Near Landfills

Communities located near landfills are exposed to both air and water pollution

Exposure to the pollutants and associated toxins are linked to various health risks

- VOCs & Particulate Matter → Respiratory & cardiovascular implication
- Leachate & Arsenic → Groundwater & soil contamination, carcinogenic
- Methane & Carbon Dioxide → GHG emissions & lack of oxygen

Coffin Butte - Community Campaigns and Collaboration



Valley Neighbors for Environmental
Quality and Safety (VNEQS)

- Outreach from Coffin Butte's surrounding communities
- Collaboration and research uncovered alarming practices:
 - Methane leaks
 - Leachate with PFAs
 - Out of date permits
 - Problematic practices:
 - Dumping of silicate and ash with no dust suppression
 - Workers' rights violations

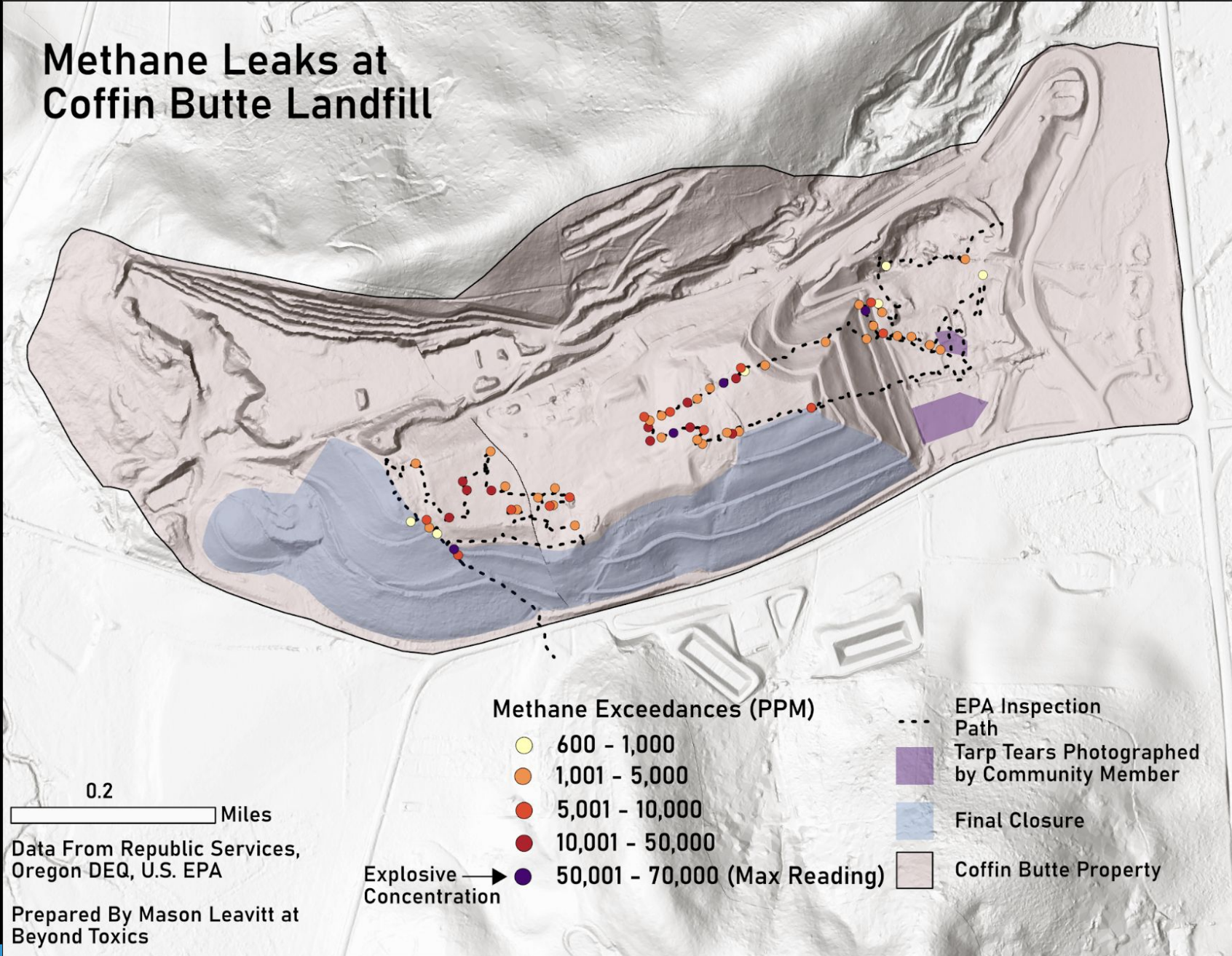
EPA Inspection Report 2022 - Methane Leaks

“Over the course of the day, [the EPA inspector] identified 61 points in excess of 500 parts per million (ppm), exhausting his supply of marking flags. One-third of these exceedances were above 10,000 ppm.”

- EPA Inspection Report (June 2022)

- **Several instances of inflated tarps were documented.**
 - Republic Services disputes the EPA’s account, claiming that wind inflated the tarp, not methane gas.
 - The EPA debunked this idea
 - No wind present during the inspection.
 - The inflated tarp demonstrates that the Gas Collection System is failing to capture and remove the gas resulting in buildups of explosive concentrations of methane.
- **Discrepancies between Republic Service’s self-reported data and EPA inspection findings**

Methane Leaks at Coffin Butte Landfill





Workers' Photo Documentation of Coffin Butte Practices

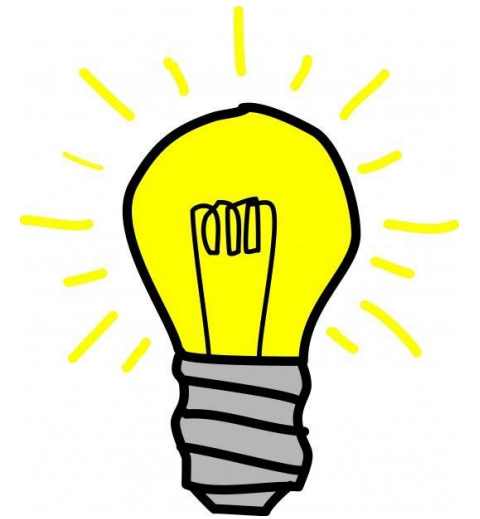
Legal Action vs. Community Realities: A Delicate Balance

- Potential statutes implicated and legal issues being scoped:
 - Clean Water Act;
 - Clean Air Act;
 - Resources Conservation and Recovery Act
- Violations found vs. data gaps vs. statutory constraints
- Community priorities and realities vs. litigation timelines



Coffin Butte Takeaways + Potential Next Steps

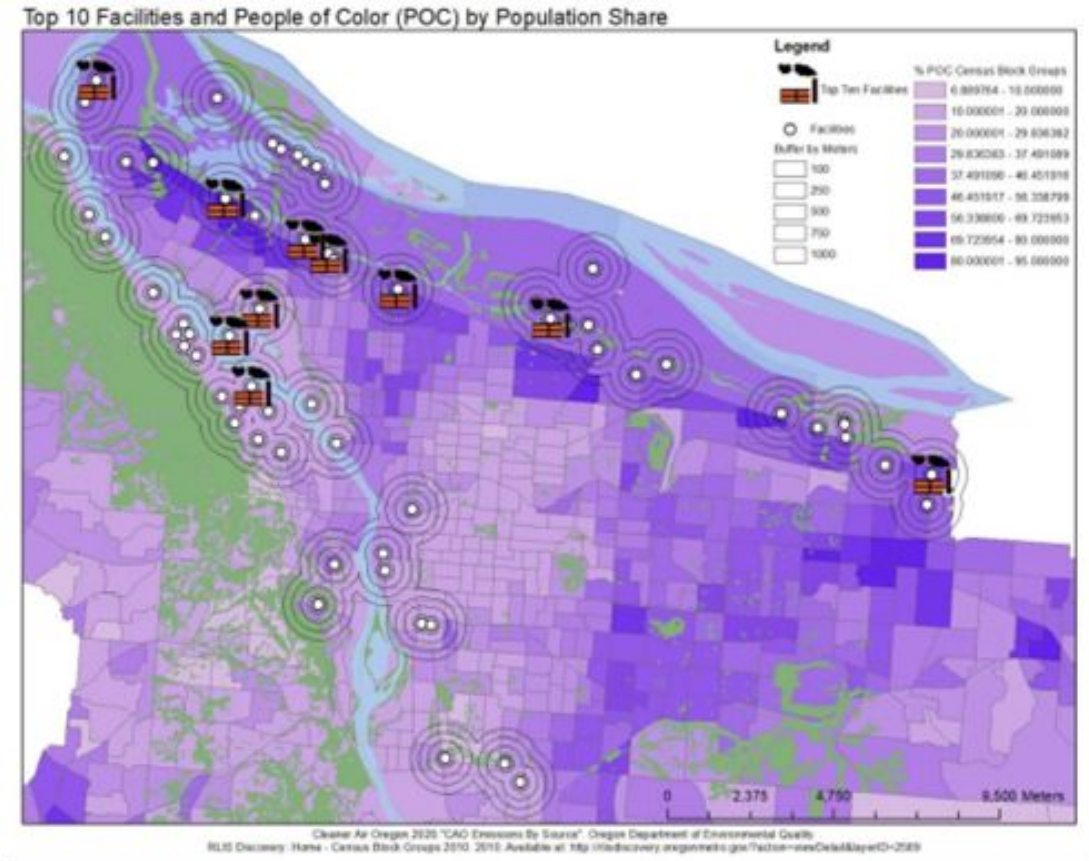
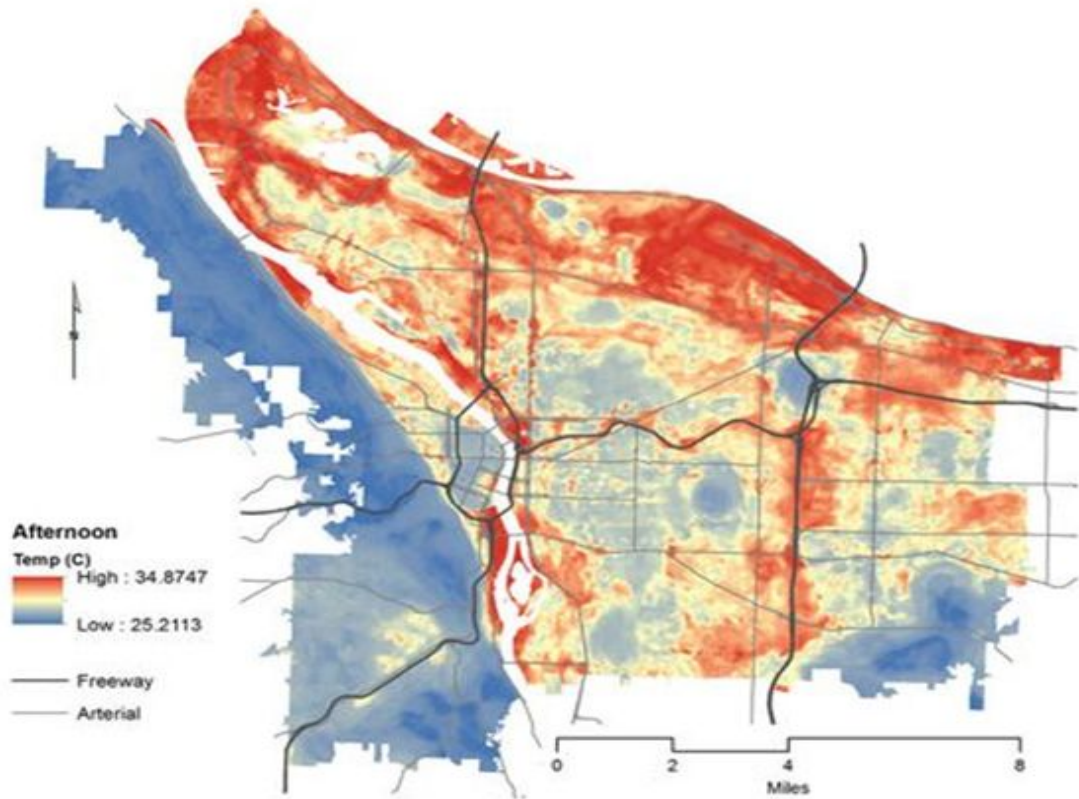
- **Continue to think of creative solutions to support community campaigns**
 - Prepare for upcoming expansion
 - Support community opposition
 - Organize town halls
 - Help write testimony to the County
- **Continue legal scoping and research**
- **Work towards larger scale policy changes**
 - Supporting principles and removing barriers of Zero Waste
 - Waste management reform
 - Increased methane monitoring of landfills
 - EJ prioritization in land use decisions



Oregon State Policy Solutions: EJ For All

- [HB 4077](#): passed 2022
 - renamed and codified the then existing Environmental Justice Task Force (EJTF) as the Environmental Justice Council (EJC).
 - 13-member statewide council responsible to advise the Governor and state natural resource agencies on environmental justice (EJ) issues.
 - Directs the Council w/ DEQ and OHA to create a GIS mapping tool on EJ impacts on projects.
 - Expanded the definition of “environmental justice communities” to broadly include communities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth, and persons with disabilities.

Disproportionate Health and Climate Burdens: heat, particulate pollution, and people of color



<https://www.oregonlive.com/environment/2020/01/historically-racist-housing-policies-exacerbating-climate-change-effects-in-low-income-portland-neighborhoods.html>

<https://www.opb.org/news/article/oregon-portland-study-people-of-color-polluted-neighborhoods-redlining-covid-19/>

EO- 20-04 (Oregon Climate Action Plan)



WHEREAS, climate change has a disproportionate effect on the physical, mental, financial, and cultural wellbeing of impacted communities, such as Native American tribes, communities of color, rural communities, coastal communities, lower-income households, and other communities traditionally underrepresented in public processes, who typically have fewer resources for adapting to climate change and are therefore the most vulnerable to displacement, adverse health effects, job loss, property damage, and other effects of climate change; and

Climate Change and Frontline Workers:

- Climate hazards such as extreme heat and wildfire events are increasing.
- Some places in Oregon will experience **double the number of hot days** by the year 2040. (Source: [2020 OHA Climate and Health Report](#))
- Oregon experienced **3 triple digit heat domes** in the summer of 2020.
- Currently, frontline workers such as farm and forest-sector workers already make up [20% of heat-related deaths](#).
- Construction workers also have [13 times higher heat-related fatality](#) compared to workers in other industries.
- There were at least [254 complaints](#) submitted to OSHA after the Summer heat waves between June 24-28 2020.

Legal, Scientific, and Activist Strategy

1. **Gathering the data**

- a. literature review of recent science on how heat and smoke are impacting human health and asthma rates

2. **Speaking to the Healthcare and Scientific Community**

- a. needed to protect vulnerable populations such as those with asthma and those not the most acclimatized to heat– and not written to those in the best physical condition.

3. **Speaking w/ impacted workers**

4. **Working with OSHA/advocating**

- a. Submitting dozens of redlined rules, comments for strong rules.

Heat Illness Prevention- Final Rules (Effective July 15, 2022)

**Codified in OAR 37-002-0156 and OAR
437-004-1131**

(<https://osha.oregon.gov/OSHAPubs/5866.pdf>)

- Applies whenever an employee performs work activities, whether indoor or outdoor , where the heat index (apparent temperature) equals or exceeds 80 degrees Fahrenheit.
- Applies in both indoor and outdoor environments.

Full Exemptions:

- Less than 15 minutes in an hour.
- Heat generated by work process.
- Emergency operations.
- Buildings with systems that keep heat index below 80 degrees.
- Employees who work from home are exempt but subject to training requirements for heat illness prevention.

Heat Illness Prevention- Final Rules (Effective July 15, 2022)

Rule requirements:

- Shade when heat index is above 80F.
- Access to cool water at all times.
- High heat practices at 90F:
 - communication between manager and employee
 - observe for heat illness
 - A cool down or rest period of at least 10 minutes is required for every 2 hours of work
 - Develop and implement emergency medical and acclimatization plans
 - [Work/rest schedule](#)

Heat Illness Prevention- Final Rules

Work/Rest Schedules

These four elements are required to be in an employer's heat illness prevention work/rest schedule:

1. The effect of personal protective equipment (PPE) on the body's ability to retain heat
2. The effect of the type of work clothing on the body's ability to retain heat
3. Relative humidity, whether work activities are indoors or outdoors
4. The intensity of the work being performed

Heat index temperature (°F)	Rest break durations
90 or greater	10 minutes every two hours
95 or greater	20 minutes every hour
100 or greater	30 minutes every hour
105 or greater	40 minutes every hour

Note: The Table 2 work/rest schedule is only required during the specified heat index temperatures.

Agricultural Labor Housing- Heat Protections

Codified in OAR 437-004-1120:

- Cooling areas- must be kept below 78F
- Minimizing Heat in Housing Units.
- Temperature Awareness.
- Employee and Occupant Information.
- Access to Emergency Services.

Protection from Wildfire Smoke- Final Rules (Effective July 15, 2022)

- **Codified in: OAR 437-002-1081 and OAR 437-004-9791**
(<https://osha.oregon.gov/OSHAPubs/factsheets/fs92.pdf>)
- Applies where employees are or will be exposed to wildfire smoke where the ambient air concentration for fine particulate matter (PM_{2.5}) is at or above 35.5 µg/m³ (Air Quality Index value of 101 for PM_{2.5}).
-

Protection from Wildfire Smoke- Final Rules

AQI value	Wildfire Smoke standards' key requirements for exposure level
101 - 250	<ol style="list-style-type: none">1. Assess and monitor air quality at each work location where employees are exposed2. Provide and document employee training3. Implement two-way communication system4. Implement engineering and administrative controls5. Provide NIOSH-approved filtering facepiece respirators for voluntary use
251 - 500	<ol style="list-style-type: none">1-4. For AQI 101 – 250 above; and7. Provide NIOSH-approved filtering facepiece respirators for mandatory use by implementing a Wildfire Smoke Respiratory Protection Program in accordance with Appendix A, in the Protection from Wildfire Smoke standards
501 and above	<ol style="list-style-type: none">1-4. For AQI 101 – 250 above; and7. Provide NIOSH-approved respirators for mandatory use by implementing a Respiratory Protection Program in accordance with 29 CFR 1910.134 or OAR 437-004-1041

2023 Heat and Smoke Rule Enforcement Statistics

- 143 heat complaints
- 31 smoke complaints
- Approximately 100 citations issued to employers involving heat violations and 3 smoke citations (resulting from 777 inspections)
- No known deaths of workers- since the emergency heat rules were enacted in 2021.

Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970

1977.12(b)(2)- federal standard

However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to **serious injury or death** arising from a **hazardous condition at the workplace**. If the employee, **with no reasonable alternative**, refuses in **good faith** to expose himself to the dangerous condition, **he would be protected against subsequent discrimination**. The condition causing the employee's apprehension of death or injury must be of such a nature that a **reasonable person**, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is **insufficient time**, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been **unable to obtain, a correction of the dangerous condition**.

[[38 FR 2681, Jan. 29, 1973, as amended at 38 FR 4577, Feb. 16, 1973](#)]

The Need for SB 907(the right to refuse hazardous work)

OAR- 437-001-0295: Discrimination Complaint (OSHA)- *Previous language*

- (1) An employee or prospective employee may file a complaint as provided in [ORS 654.062 \(Notice of violation to employer by worker\)](#)(5) if the employee believes discrimination has occurred because:
 - (a) The employee opposed a practice forbidden by, or engaged in a practice provided for, in the Oregon Safe Employment Act; **or**
 - (b) The employee **refused in good faith to be subjected to imminent danger** provided the employer refused to correct the hazard or it was **not possible to notify the employer of the danger** and the employee has notified Oregon OSHA or other appropriate agency, of the hazard, **unless excused** on the basis of insufficient time or opportunity as stated in [OAR 839-003-0025 \(Filing a Complaint: Employment \(other than OSEA\) and Public Accommodation\)](#), Bureau of Labor and Industries rules.

OAR 839-004-0016 (Bureau of Labor and Industries)

OAR 839-004-0016 (Bureau of Labor and Industries)

(1) ORS 654.062 **prohibits discrimination against an employee** or prospective employee because the employee or prospective employee:

- (a) Made any complaint or instituted or caused to be instituted any proceeding under or related to OSEA;
- (b) Testified or is about to testify in any such proceeding;
- (c) Exercised on behalf of the employee or prospective employee, or others, any right afforded by OSEA;
- (d) Engaged in a practice provided for by OSEA;
- (e) Opposed any practice prohibited by OSEA or which the employee or prospective employee in good faith believed was prohibited by OSEA.....

The next iteration of policy (SB 907)

Right to Refuse Hazardous work

OAR- 437-001-0295: Discrimination Complaint (OSHA)- New Language

(b) With **no reasonable alternative and in good faith**, the employee refused to perform a work task that would expose the employee to a **hazardous condition** that presents a real risk of death or serious physical harm and a **reasonable person** would agree under the circumstances all of the following conditions are met:

(A) Where possible, the employee requested from the employer, and was unable to obtain, a correction of the hazardous condition; and

(B) A hazardous condition that, if exposed, would have subjected the employee to imminent danger or serious physical harm; and

(C) Due to the urgency of the hazardous condition, there was **insufficient time** or opportunity to correct the hazard through regulatory authorities, such as Oregon OSHA.

Examples:

REAL LIFE SCENARIO

A worker is told to bring gravel to the bottom of a sloped street using a heavy-duty loader. The worker knows the brakes on the loader are faulty and tells the boss he is concerned for the safety of his coworkers at the bottom of the slope. The boss says not to worry and to go ahead with the work. The worker **WOULD** have the protection of the right to refuse dangerous work.

REAL LIFE SCENARIO

A worker is sent to lay irrigation pipe on his own in a distant field on an 100 degree day. He asks his supervisor to send another worker with him so they can monitor each other and lighten the load of the heavy pipes. The supervisor tells him to tough it out. The worker **WOULD** have the protection of the right to refuse dangerous work.

Summary of Themes:

- There is no clear-cut EJ statute, which is why access to justice in the environmental justice context is so disjointed.
- There is no prescribed method to advocate for EJ.
 - We are working in confined legal frameworks and simultaneously expanding frameworks in the policy space.
- **Be creative in solutions.**
 - Have to look at multiple avenues to address community harms





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THANK YOU!

Questions?