

# Biden Administration Environmental Justice: Recent Developments

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## Recent Developments

- Review of US EJ infrastructure
- Status of EPA & White House efforts
  - screening tools, budget, DOJ, NEPA
- Enforcement
- Developing controversies

### EPA Definition



Environmental Justice (EJ) is 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.

This goal will be achieved when everyone enjoys:

- The same degree of protection from environmental and health hazards, and
- Equal access to the decision-making process to have a healthy environment in which to live, learn, and work

# Environmental Justice Executive Actions

George HW Bush federally sponsored EJ Workgroup with community leaders (1990)

- EPA Environmental Equity Workgroup
- EPA Office of Environmental Equity (1992) (renamed **NEJAC - National EJ Advisory Council** 1994)

Clinton EO 12898 Federal Actions to Address EJ in Minority & Low-Income Populations (1994)

- Address disproportionately high & adverse effects of programs on minority & low-income populations
- **Interagency Environmental Justice Working Group** & Agency EJ strategies
- Memorandum: Title VI Civil Rights Act, NEPA, community involvement, access to information

Obama Memorandum of Understanding on Environmental Justice and EO 12898 (2011)

- Renew need for agency EJ strategies, Interagency Workgroup, areas of focus:
  - Title VI Civil Rights Act, NEPA, climate change, impacts from commercial transportation & infrastructure
- EPA: PlanEJ 2014, EJSCREEN, Guidance for analysts and rulemakers, Strategic Plan 2016 - 2020

Biden EO 13990 Protecting Public Health & Environment / Climate Crisis (2021)

- Policy to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions
- EPA Updated EJSCREEN and EJSCREEN adapted to local communities
- **WHEJAC** (White House Environmental Justice Advisory Council) 3 workgroups
  1. Updating Clinton Executive Order (EO) 12898
  2. Justice40 (40% of benefits of infrastructure to disadvantaged communities)
  3. Climate Justice Screening Tool

## US SCREENING TOOLS as of June 2021

1. EPA EJSCREEN – updated and adapted for local communities
2. WHEJAC - CEQ Climate and Economic Justice Screening Tool Workgroup

### **Goal and Purpose**

- Holding people accountable
- Data on the permitting process that will enable meaningful participation by communities
- Data on permits, what is being allowed
- Data on Emissions
- Pollution and Emission, Healthy, Process, and Economic Indicators
- Performance Metrics
- Funding
- Accountability for process

### **Indicators/Data Should be Included**

- Exposures
- Proximity to Potential Hazards
- Sensitive Populations
- Demographics/SES Factors
- Energy
- Economic Development
- Climate Vulnerability
- Infrastructure

## BIDEN ADMINISTRATION BUDGET

### President Biden Budget – EJ programs / spending

- \$1.4 billion EJ initiatives
- 212 new EJ positions across government
- EPA Budget
  - EPA Assistant Administrator (Senate confirmed) for Environmental Justice
  - \$936 M new Accelerating Environmental and Economic Justice initiative
  - \$100 M new community air quality monitoring and notification program
  - \$230 M increase in competitive grants, community-based programs, education, legal support

### US DOJ

- New Environmental Crime Victim Assistance Program

## BIDEN ADMINISTRATION NEPA RULE REWRITE UNDER CONSIDERATION (major infrastructure bill pending)

CEQ: NEPA could be revised to reflect different priorities of administration

### Revisions sought by environmental groups:

- consider cumulative impact of project on EJ communities  
(not only reasonably foreseeable effects with close causal relationship to project)
- longer comment period than 45 days for environmental impact statements
- funding and help for EJ communities to understand technical details to better challenge projects
- define “EJ community” with qualitative data ( eg, minority density, home ownership rate, poverty rate, household wealth) compiled in central database
- mandatory unrelated mitigation, eg community center, local development

# ENFORCEMENT

## **DEPARTMENT OF JUSTICE GUIDANCE CONCERNING ENVIRONMENTAL JUSTICE**

Authority: Executive Order No. 12898  
Attorney General Eric Holder (2014)

In fulfillment of President Clinton's 1994 Executive Order No. 12898, . . . , Attorney General Janet Reno in 1995 issued an Environmental Justice Strategy ("Strategy") to promote enforcement of civil rights, health, and environmental statutes, and ensure greater public participation in decisions affecting human health and the environment. Concurrently, Attorney General Reno issued the Department of Justice Guidance Concerning Environmental Justice ("Guidance") to assist Department employees in carrying out their obligations under the Strategy and Executive Order. This revised Guidance provides a framework for coordination on environmental justice, procedures for identifying environmental justice issues, and illustrative examples.

- Title VI Program Evaluation
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in all federally assisted programs. 42 U.S.C. § 2000d et seq. Most agencies that provide Federal assistance subject to Title VI have regulations implementing Title VI. See, e.g., 28 C.F.R. §§ 42.101-.112 (governing Justice Department components' implementation of Title VI). These regulations apply not only to intentional discrimination, but also to policies and practices that have a discriminatory effect.

## ENFORCEMENT

EPA PlanEJ 2014

Legal Tools (EPA Office of General Counsel, December 2011)

Title VI and Executive Order 12898 Comparison

Aspects of the Authorities	Title VI of the Civil Rights Act of 1964	Executive Order 12898
What is the authority?	Title VI is a federal statute enacted as part of the Civil Rights Act of 1964.	E.O. 12898 is a Presidential executive order signed in 1994. It is not a statute or law.
What does it say?	<p>Title VI prohibits discrimination on the basis of <u>race, color, and national origin</u> in programs and activities receiving federal financial assistance.</p> <p>Title VI itself prohibits intentional discrimination, and most funding agencies have regulations implementing Title VI that prohibit recipient practices that have the effect of discriminating on the basis of race, color, or national origin.</p>	E.O. 12898 directs all Federal agencies to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”



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Title VI and Executive Order 12898 Comparison

Aspects of the Authorities	Title VI of the Civil Rights Act of 1964	Executive Order 12898
How is it enforced?	Individuals alleging <u>intentional</u> discrimination may file suit in federal court or a complaint with the federal agency providing funds for the program or activity at issue.	E.O. 12898 is not enforceable in the courts and it does not create any rights, benefits, or trust responsibilities enforceable against the United States.

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Aspects of the Authorities	Title VI of the Civil Rights Act of 1964	Executive Order 12898
How is it enforced (cont.)?	<p>If a program or activity has a <u>discriminatory effect</u>, individuals may file an administrative complaint with the federal funding agency. An individual <u>cannot</u> file a suit in federal court to address discriminatory impacts of a recipient’s activities.</p> <p>Additionally, federal agencies have the authority to conduct compliance reviews of recipients to ensure their activities do not violate Title VI.</p>	<p>While the E.O. 12898 is not enforceable against the United States, it is a Presidential order that requires each Federal agency to “conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons ... from participation in, denying persons...the benefits of, or subjecting persons...to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.”</p> <p>Therefore, to accomplish the goals of E.O. 12898, a Federal agency may implement policies that affect their funding activity. Agencies may also utilize their authority under various laws such as the Clean Air Act, National Environmental Policy Act, and the Fair Housing Act to achieve the goals of the Executive Order.</p>

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*How do the Executive Order and Title VI overlap?*

The Presidential Memorandum accompanying EO 12898 states, in part:

“I am therefore today directing that all department and agency heads take appropriate and necessary steps to ensure that the following specific directives are implemented immediately: In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”

Agencies’ Title VI enforcement and compliance authority includes the authority to ensure the activities they fund that affect human health and the environment, do not discriminate on the basis of race, color, or national origin. Therefore, agencies can use their Title VI authority, when appropriate, to address environmental justice concerns.

## EJ DEVELOPING CONTROVERSIES

### Memphis TN: Byhalia Connection crude oil pipeline

- routes pipeline (OK to Gulf Coast) around Memphis, several miles through SW Memphis
- Memphis City Council unanimous initial ok April 2021; Army Corps wetlands permit
- Public opposition; City Council decision on hold
- ARG: “pollution localized, benefits dispersed”
- ARG: no legal authority to consider EJ

### Archer FL: Origis FL Solar 6-Sand Bluff project

- 600 acres, 50 MW solar array, 12 MW battery storage
- Gainesville commitment: 100% renewable
- FL legislature: local govt cannot ban rural solar arrays

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