

CIBO  
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Environmental Justice Update

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## 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

# Biden Administration - Environmental Justice and Climate Crisis

## **Executive Orders**

EO 13990 (January 20, 2021)

Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis

EO 13985 (January 20, 2021)

Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

EO 14008 (January 27, 2021)

Tackling the Climate Crisis at Home and Abroad

## **Work Groups / Councils**

NEJAC - National EJ Advisory Council (1994)

Interagency Environmental Justice Working Group

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

## **Screening Tools**

EJSCREEN and EJSCREEN screening tools adapted to local communities

Climate / EJ screening tool coming in beta soon

# NEJAC

NEJAC purpose “provide independent advice and recommendations” to EPA on broad, crosscutting issues related to EJ.

## **Aug 18-19 2021 Virtual Public Meeting**

### 6 Workgroup Reports

1. Farmworker concerns & Pesticides
2. PFAS/PFOA Issues
3. Water Infrastructure Charge Update (to include water equity & quantity)
4. NEPA Roll Backs
5. Community Air Quality
6. Finance/Justice40

## **Jan 5 2022 Virtual Public Meeting**

- Focus: EJ & civil rights compliance elements in EPA FY 2022-2026 Draft Strategic Plan, future implementation
- Will hear public comment about Draft Strategic Plan
- will evaluate “broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to EJ.”

## Justice40 Initiative

### White House OMB / CEQ Interim Implementation Guidance (7.20.21)

40% of benefits from specified US program spending must be directed to EJ communities

Covered Program = US program that makes covered investment in:

- i. Climate change
- ii. Clean energy and energy efficiency
- iii. Clean transportation
- iv. Affordable & sustainable housing
- v. Training & workforce development (related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction, including in energy communities)
- vi. Remediation and reduction of legacy pollution
- vii. Critical clean water and waste infrastructure

21 Pilot programs for agencies to develop blueprint for implementing the program once major funds flow

- EPA pilots underway: drinking water state revolving fund, brownfields program, Superfund remediation, Diesel Emissions Reduction Act program and the reducing lead in drinking water program.

Final Guidance coming soon

- Will include how agencies should measure “benefit” – to address concerns with accountability re 40%

# OUTREACH



## **National EJ Community Engagement calls. These calls are free & open to the public.**

The purpose of these calls is to inform communities about EPA's environmental justice work and enhance opportunities to maintain an open dialogue with environmental justice advocates. As environmental justice continues to be integrated into EPA programs and policies, the Agency hopes that these calls will help reaffirm EPA's continued commitment to work with community groups and the public to strengthen local environmental and human health outcomes. EPA has increased the frequency of these engagement calls to learn more from stakeholders and communities and to provide updates about ongoing initiatives.

**DATE:** December 7, 2021

**TIME:** *2 p.m. Eastern, 1 p.m. Central, Noon Mountain, 11 a.m. Pacific*

**AGENDA:** TBD

## RESOURCES

### Bipartisan Infrastructure Law (11.15.21)

- \$60 billion to EPA for drinking water and wastewater systems
- Admin Reagan Journey to Justice tour: MS, LA, TX
- Admin Regan Letter to Governors 12.2.21
- Most \$ (\$44B over 5 years) via State Revolving Funds, half grants or forgivable loans
- Natl Program Guidance from EPA Water Office soon
- EPA must approve state intended use plans

FOR CONTEXT:  
EPA ANNUAL  
BUDGET TYPICALLY  
\$15B

Top priority: target resources to disadvantaged communities.

“Every state in America has disadvantaged communities. . . These communities have never received their fair share of federal water infrastructure funding.”

(+ billions more for other environmental programs in infrastructure law)

Budget Reconciliation and FY22 Appropriations increase

## ENFORCEMENT BACKGROUND

### **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 BACKGROUND

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.”

## ENFORCEMENT BACKGROUND

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
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.

## ENFORCEMENT BACKGROUND

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
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>

## ENFORCEMENT BACKGROUND

EPA Plan EJ 2014 Legal Tools (EPA Office of General Counsel, December 2011)  
Title VI and Executive Order 12898 Comparison

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

The Presidential Memorandum accompanying EO 12898 states, in part:

“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.”

BIDEN ADMINISTRATION: Title VI will be used to enforce EJ principles

ENFORCEMENT AT EPA: EPA External Civil Rights Compliance Office (ECRCO)

### Strategic Goals

Goal 1: Tackle the Climate Crisis

Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Goal 3: Enforce Environmental Laws and Ensure Compliance

Goal 4: Ensure Clean and Healthy Air for All Communities

Goal 5: Ensure Clean and Safe Water for All Communities

Goal 6: Safeguard and Revitalize Communities

Goal 7: Ensure Safety of Chemicals for People and the Environment

### Cross-Agency Strategies

Strategy 1: Ensure Scientific Integrity and Science-Based Decision Making

Strategy 2: Consider the Health of Children at All Life Stages and Other Vulnerable Populations

Strategy 3: Advance EPA's Organizational Excellence and Workforce Equity

Strategy 4: Strengthen Tribal, State, and Local Partnerships and Enhance Engagement

### COMMENTS due 11.12.21

- States TX WI ND CA KS CO SD ECOS etc
- Industry NFIB, RTI Intl, APGA, Petroleum Alliance, Natl Turfgrass Federation, etc
- Environmental groups, Tribes, etc

Goal 1: Tackle the Climate Crisis

Goal 2: Take Decisive Action to Advance Environmental Justice and *Civil Rights*

- Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels
- Objective 2.2: Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities
- Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns

*Civil Rights* = prohibit discrimination on the basis of: race, color, or national origin (including on the basis of limited-English proficiency); sex; disability; age; and retaliation by applicants for and recipients of federal financial assistance from EPA.

(Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, respectively.)

EPA is also responsible for enforcing Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination based on sex under programs or activities receiving financial assistance under the Clean Water Act.

Goal 1: Tackle the Climate Crisis

Objective 1.1: Reduce Emissions that Cause Climate Change

Tackling the climate crisis will require deep gains in energy efficiency and deep decarbonization of buildings, transportation, and the power and **industrial sectors**. EPA will collaborate closely with stakeholders to drive energy efficiency, grid decarbonization, and zero emissions mobility.

Deep emission reductions will require significant transitions in technologies and energy systems that must be informed by community-level engagement, input, and analysis.

EPA will take all measures within its authorities to speed this transition and will do so in a just, equitable, and inclusive manner.

**Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights**

**Introduction (p.20)**

“These efforts lead to more responsible and equitable siting and permitting decisions by recipients of EPA funding...reductions in racial and ethnic disparities among communities enduring mismanaged solid waste programs and processes...increased access to other environmental resources such as green spaces...EPA will work to...strengthen civil right enforcement in communities overburdened by pollution.”

**TX COMMENT:**

- What will EPA require of States & what is EPA legal authority to make these requirements?
- How will ERCO address a State recipient’s lack of jurisdiction or authority when ERCO investigates a complaint? TCEQ has limited jurisdiction.
- “For example, TCEQ does not have authority to consider equity, zoning, or siting beyond certain environmental conditions when reviewing permit applications. TCEQ also has no authority over an individual’s access to green spaces or land use planning. The Plan also fails to address how ERCO’s guidance and authority will account for different jurisdictional limitations and obligations among the different states.”
- “no EPA regulation addresses how equity would be defined, measured, weighed, or considered in permitting or enforcement decisions. Further definition of essential terms under the Plan is needed.”



**Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights**

**Objective 2.2: Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities**

Many of the problems that need to be addressed have been well-known but unsolved for decades. Communities that have multiple industrial and energy facilities and are saturated with legacy pollution want to see EPA realign its enforcement in a way that provides action, accountability, and guidance for taking cumulative impacts and risks into account, even if they cannot be measured with precision.

EPA must make significant and urgent progress in fundamentally grounding its work in addressing disproportionality, which includes understanding of and reacting to issues of *cumulative impacts and cumulative risks*, and rapidly advance its ability to analyze for disproportionate impacts.

EPA program and regional offices also must recognize and address civil rights issues that arise as they implement their responsibilities under environmental laws, such as their *permit review responsibilities*.

**Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights**

**Objective 2.2 External Factors & Emerging Issues (p.28)**

“Permitting and rulemaking have typically not reflected the reality of overburdened communities, which means that it is often easier to site an eighth facility in a community that already has seven than in a community that has none. Since *permitting is primarily implemented by other governmental partners with delegated authority from EPA*, the work of integrating environmental justice and external civil rights considerations throughout all EPA programs and activities will require commitment, relationship building, and trust from partner agencies.”

TX COMMENT:

what actions will be required of States and what is EPA’s authority for the requirements?

- How will EPA integrate EJ and civil rights considerations into EPA programs and activities, particularly any requirements for a cumulative impacts analysis.
- [ECRCO working on cumulative impacts guidance]
- This information is necessary for state agencies to understand EPA expectations and states should be allowed to provide input into any new strategies or rulemaking efforts.

SD COMMENT: this needs to be done by rule not guidance

KS COMMENT: States will need time to determine potential statutory limitations. State statutes and regs could conflict with EPA’s EJ policy or goal.

### **Goal 3: Enforce Environmental Laws and Ensure Compliance**

- focus federal enforcement resources on the most serious environmental problems
- small number of National Initiatives, where focused EPA attention will be especially value-added.
- reconsider Dec 2020 decision to retain PM NAAQS because available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare
- will focus on evaluating environmental justice considerations related to the NAAQS during review and implementation.
- Stationary fuel combustion sources, such as electric utilities and **industrial boilers**, continue to represent a significant proportion of the nation's emissions inventory.
- In meeting statutory and legal requirements to regulate stationary sources, EPA will maximize public health benefits and make environmental justice and community outreach central in these rulemaking efforts.

**Goal 4: Ensure Clean and Healthy Air for All Communities**

**Objective 4.1: Improve Air Quality and Reduce Localized Pollution and Health Impacts**

Stationary fuel combustion sources, such as electric utilities and **industrial boilers**, continue to represent a significant proportion of the nation’s emissions inventory. In meeting statutory and legal requirements to regulate stationary sources, EPA will maximize public health benefits and make environmental justice and community outreach central in these rulemaking efforts.

**Goal 6: Safeguard and Revitalize Communities**

**Objective 6.3: Prepare for and Respond to Environmental Emergencies**

EPA's chemical safety and oil programs will prioritize inspection activities at high-risk facilities to protect communities, including those with environmental justice concerns. EPA will review the programs to determine if risks posed by climate change warrant modifications to the programs.

EPA also will consider regulatory modifications under **CAA Section 112(r)** to help prevent serious industrial chemical accidents, mitigate those that occur, and provide communities with better access to information about industrial chemical hazards.

## EJ UPDATE - SUMMARY

EJ PRINCIPLES, GOALS, OUTREACH --- development well underway

EJ ENFORCEMENT definitions, legal standards, interpretive rules for agencies, accommodation of roles of States/local governments --- lagging

- US has said it will enforce EJ through Civil Rights Act Title VI
- Applicable legal standards for what constitutes a violation unclear
- Key definitions lacking
- EPA ECRCO developing cumulative impacts guidance
- US DOJ likely developing internal legal analyses, interpretive options, recommended positions
- Agency civil rights enforcement offices are receiving petitions to investigate
- EJ claims are being raised in lawsuits, permitting actions, pending projects

(Vacated) ACE CPP RULES in the Supreme Court

SUPREME COURT -- CLEAN AIR ACT REGULATION  
of GHG Emissions from Power Plants

**DC Circuit**

*American Lung Association v. EPA* (Jan 19 2021)

vacated ACE Rule & withdrawal of CPP (CPP not in effect)

**US Supreme Court**

*West Virginia v. EPA* + 3 related petitions

In 42 U.S.C. § 7411(d), an ancillary provision of the Clean Air Act, did Congress constitutionally authorize the Environmental Protection Agency to issue significant rules- including those capable of reshaping the nation's electricity grids and unilaterally decarbonizing virtually any sector of the economy-without any limits on what the agency can require so long as it considers cost, nonair impacts, and energy requirements?



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