

Environmental Justice Update 2022

**CIBO Virtual Energy & Environmental Committee
Meeting**

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Today's Agenda

- ✓ Defining Environmental Justice (EJ)
- ✓ Federal Plans and Activities
- ✓ Cumulative Impact Assessments
- ✓ Current Federal Enforcement Actions
- ✓ EJ Tools
- ✓ State Program Update
- ✓ State examples: Louisiana, New Jersey, and Texas
- ✓ Environmental Justice Actions
- ✓ How to prepare / What's next?



What is Environmental Justice?

There are several definitions of Environmental Justice from state to state, but EPA's official definition 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."

Biden Administration – New Focus on EJ

- ❑ January 2021, Executive Order (EO 14008), EJ a key facet of the administration's environmental policy
- ❑ EO defined an “All of Government Approach”. EJ and climate change impacts to be considered as part of all government activities
- ❑ “Justice 40” plan, targets clean energy investments: goal of delivering 40 percent of the benefit to overburdened communities
- ❑ “Environmental Justice Mapping and Data Act” introduced: legislative framework, and funding to support EO 14008
- ❑ Commitment to use a more integrated approach using EJSCREEN as the primary tool for identifying EJ areas



Increased use of Civil Rights Act in EJ Cases

Title VI of the Civil Right Act states:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

- ❑ Possible avenue for EPA to pressure states on EJ issues
- ❑ Threat of lost federal funding
- ❑ EPA currently investigating the permitting programs of several states (Louisiana, Texas, Michigan) for possible Title VI violations





Federal EJ Activities

- ❑ In June, EPA Office of General Counsel issued its revised “EPA Legal Tools to Advance Environmental Justice”
- ❑ August 16: Inflation Reduction Act (IRA) includes \$47.5 billion in direct EJ benefits, including millions for various fence line monitoring programs
- ❑ Also on August 16, EPA’s External Civil Right Compliance Office (ECRCO) published “Interim Environmental Justice and Civil Rights in Permitting” outlining how permitting rules can be used to deny permits on an EJ basis.
- ❑ On September 24, EPA announced the creation of the Office of Environmental Justice & External Civil Rights, to be co-equal with the current media-specific (air, water, etc.) programs



Federal EJ Activities (cont.)

- ❑ NEJAC is preparing transformative recommendations to the EPA's air monitoring plan, including:
 - Data collection within the fence line to capture immediate emissions data
 - Publication of the data in real-time to public and regulators via websites
 - Push notifications to public and regulators in cases of permit or air standard violations
 - Seed change: Assumption that public complaints are valid, setting up a “guilty until proven innocent” burden on industry
- ❑ In October, the Science Advisory Board (SAB) recommended that EPA begin to quantify the EJ benefits of as part of the cost-benefit analysis.

Coming Soon - Cumulative Impact Assessments

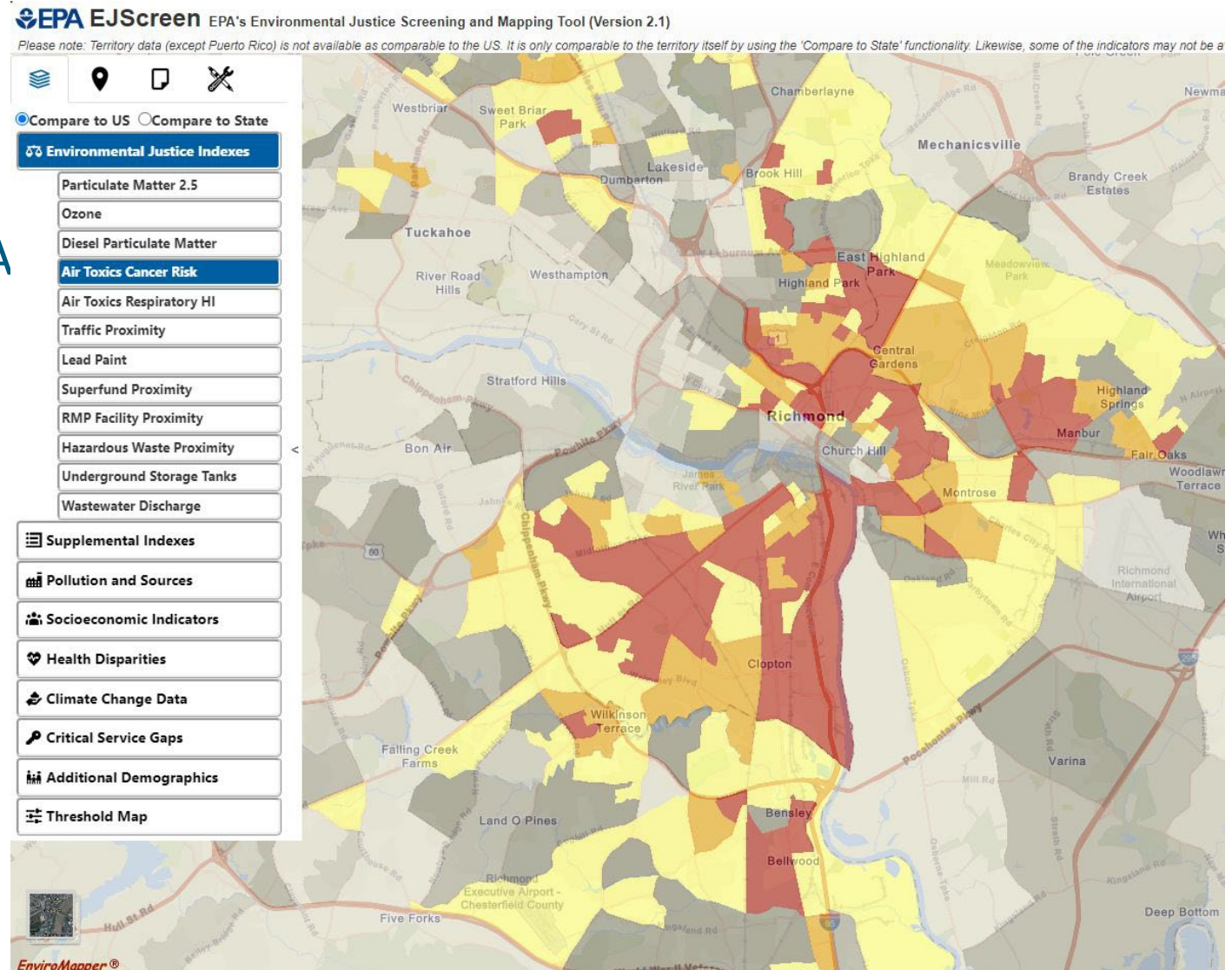
- ❑ Not a new idea: Initially floated by Bush administration in 2003, raised in Obama's 2014 environmental agenda but stalled
- ❑ Assesses cumulative impacts from overlapping environmental hazards:
 - Air, water, waste
 - Public health
 - Non-chemical stressors (higher at-risk local population, etc.)
- ❑ Certain populations more vulnerable due to higher exposure and compromised ability to cope with stressors
- ❑ Not limited to just your facility
- ❑ EPA expected to release guidelines by the end of 2021, then Q1 2022, now? Equity Action Plan said implementation by September 2023...
- ❑ Recent SAB meeting revealed uncertainty on path forward

The Tools of EJ

- ❑ **EJSCREEN 2.1**
- ❑ **Climate and Economic Justice Screening Tool (CEJST)**
- ❑ **ECHO Notify w/Benzene Fenceline Monitoring Dashboard**
- ❑ **Power Plants and Neighboring Communities Tool**
- ❑ **Environmental Justice Index Tool (EJI)**
- ❑ **EPA Nexus Cumulative Impact Screening Tool**
- ❑ **State Specific Tools (CA, NJ, MI, IL, NC, and others)**



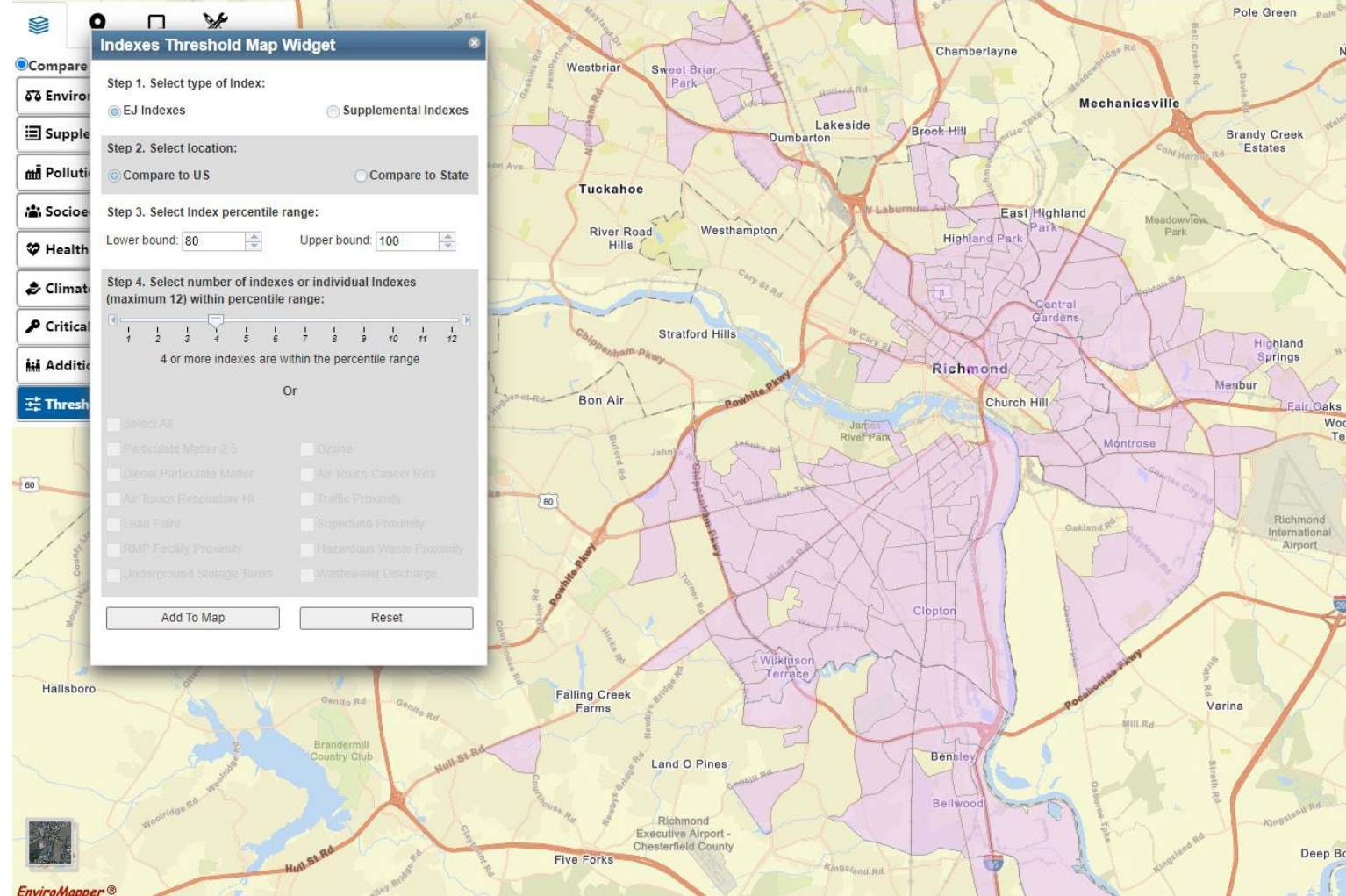
- ❑ Revised Interface – Easier to reach indicators behind the EJ Indexes
- ❑ Data is updated to include 2019 ACS data for demographics and 2017 NATA data but still based on 2010 Census data
- ❑ More direct access to environmental indicators: facilities that may not have EJ concerns now come up “red”
- ❑ Additional new data added: health disparities, climate change data, and critical service gaps. Not part of the EJ Index calculations



- ❑ Adds the US Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands
- ❑ Supplemental Indexes with demographics covering:
 - Percent limited English speaking
 - Percent less than high-school education
 - Percent unemployed
 - Low-life expectancy
 - Percent low-income
- ❑ Threshold Maps
- ❑ 2016-2020 American Community Survey (ACS)

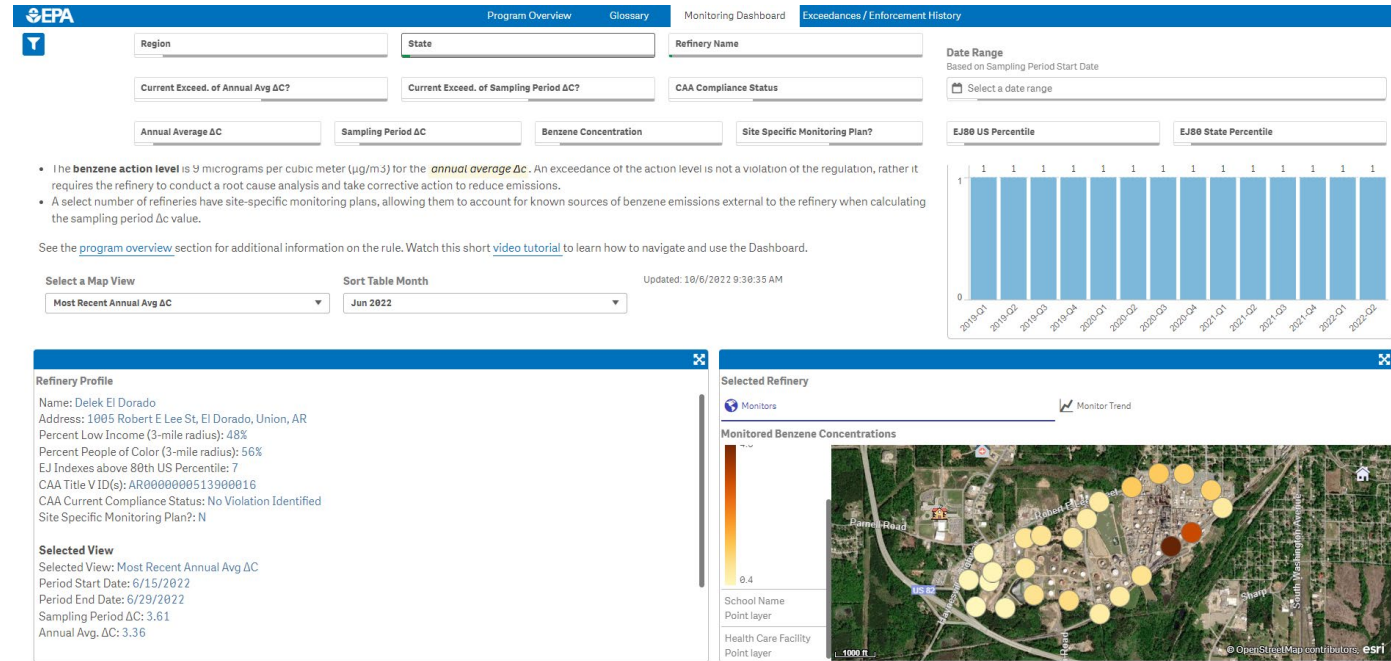
EPA EJScreen EPA's Environmental Justice Screening and Mapping Tool (Version 2.1)

Please note: Territory data (except Puerto Rico) is not available as comparable to the US. It is only comparable to the territory itself by using the 'Compare to State' functionality. Likewise, some of the indicators may not be available for territories.



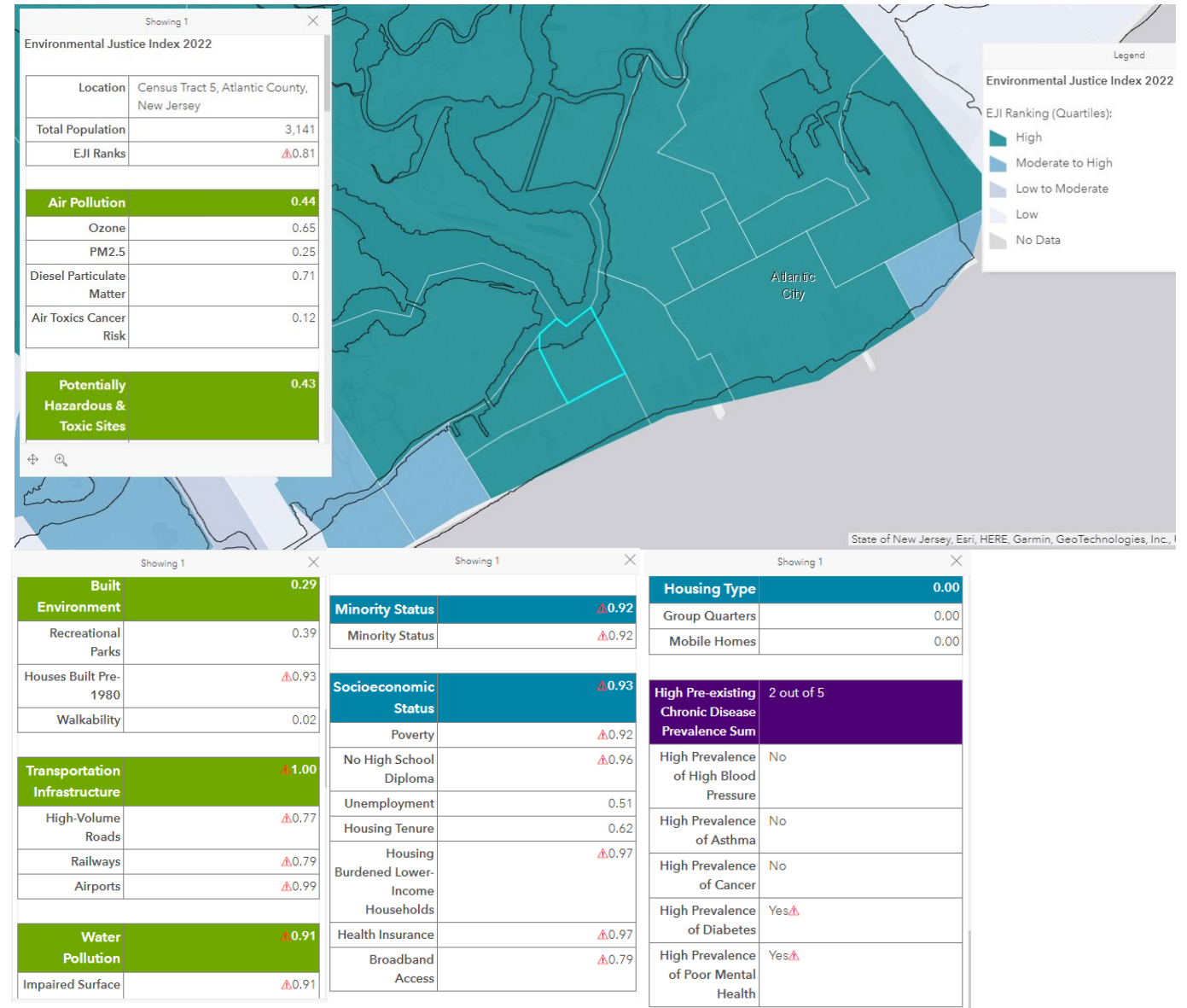
ECHO Notify

- ❑ Allows users to receive weekly emails when new information, such as an enforcement action or violation, has taken place at a nearby facility. Linked directly to the Enforcement and Compliance History Online (ECHO) database
- ❑ User creates an account, selects a geographic area and which programs to monitor:
 - Clean Air Act
 - Clean Water Act
 - Resource Conservation and Recovery Act
 - Safe Drinking Water Act
- ❑ Recent Addition: Access to Benzene Fence Line Monitoring Dashboard



Environmental Justice Index Tool (EJI)

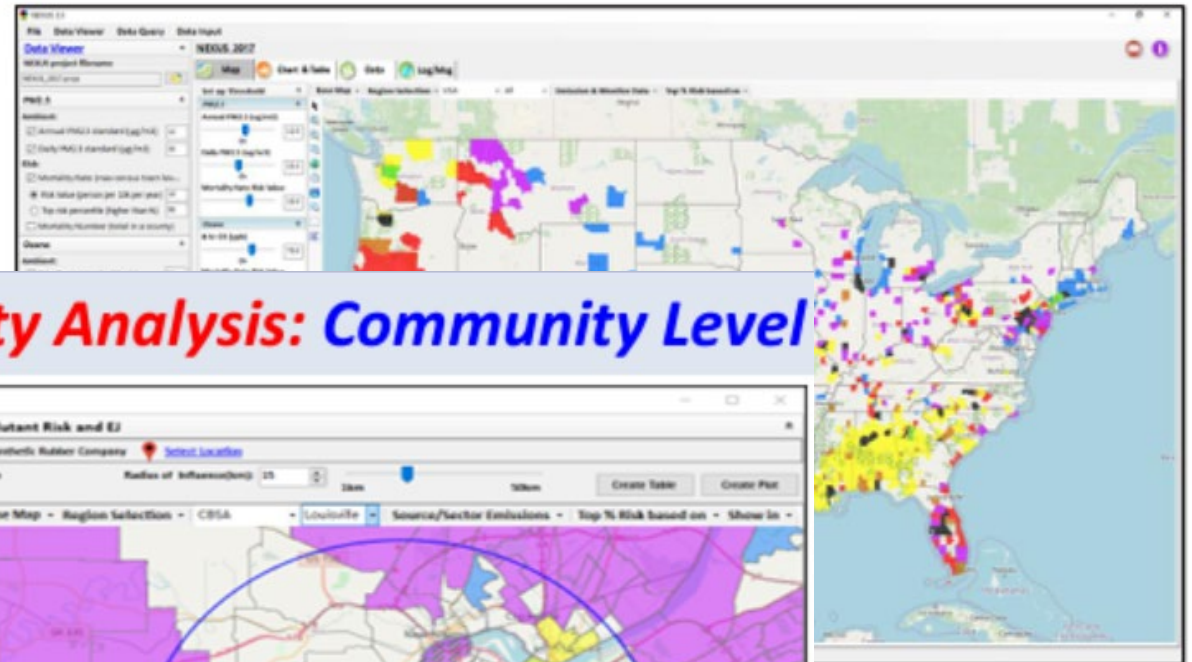
- Partnership of The Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry and the Department of Health and Human Services' Office of Environmental Justice
- First tool to calculate cumulative risk at a national level
- Evaluates cumulative health risk by census tract and assigns EJI score.
- Results color coded by EJI score



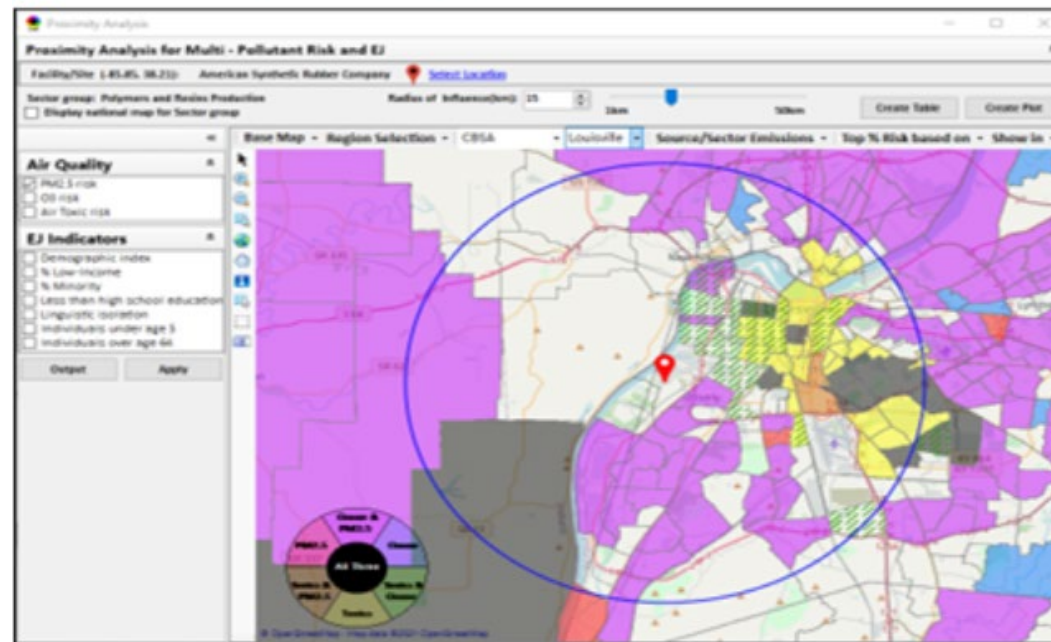
EPA Nexus Tool (Beta)

- ❑ Multi-pollutant screening tool that maps air quality data over EJSCREEN demographics
- ❑ Assesses cumulative impacts of multiple pollutants on a census tract level
- ❑ The focus is on ozone, fine particulate ($PM_{2.5}$), and their precursors, and toxics.
- ❑ Currently in Beta for internal EPA use only.

Data Viewer: National/Regional Level



Proximity Analysis: Community Level



State Activities

- ❑ Alabama – Adding EJSCREEN report to all permit notices
- ❑ North Carolina, New York, New Jersey, Delaware – Requiring EJ assessment as part of the permitting process
- ❑ Virginia – Virginia Air Pollution Control Board approval of “Controversial” permits
- ❑ Pennsylvania and Vermont – Announced draft version of EJ Policies
- ❑ Michigan – Released beta version of state EJ screening tool
- ❑ California – AB1001 with EJ component advanced to state senate

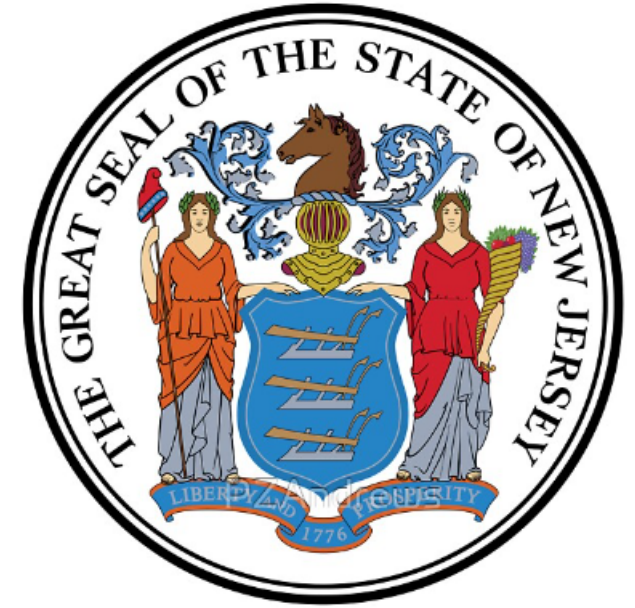
Environmental Justice in Louisiana

- ❑ Westlake Decision: EPA reached a settlement agreement with Westlake Chemical requiring facilities in Louisiana and Kentucky to conduct fence line monitoring, install additional air pollution controls, and pay a \$1 million fine
- ❑ Formosa Decision: Louisiana court rejected 14 air permits for a large chemical complex on EJ and Clean Air Act grounds
 - Violation of Louisiana public trust doctrine
- ❑ Title VI investigation and “Letter of Concern”
 - EPA issued 56-page letter suggesting that LDEQ is violating Title VI of the Civil Rights Act
 - Recommends LDEQ commence cumulative impacts assessment as part of an “informal resolution agreement”



Environmental Justice in New Jersey

- ❑ First state to require, via legislation, evaluation of EJ for permit applications for all major and some categories of minor sources in overburdened communities identified by the states EJMAP tool
- ❑ Applies to new permits, permits for expansion, and Title V renewals:
 - Environmental Justice Impact Statement (EJIS): Applicant must prepare an EJIS to show how the project would avoid a disproportionate impact on the overburdened community or serve a compelling public interest
 - If NJDEP approves, project moves to “meaningful public participation” process of a minimum 60-day duration. Upon completion, NJDEP may authorize projects, potentially adding additional permit requirements, or deny the application
- ❑ New Jersey DEP filed six EJ related lawsuits, all against facilities in what are considered overburdened communities. Compliance related



Environmental Justice in Texas

- ❑ EPA is investigating whether the TCEQ permitting rules for batch concrete plants violate Title VI for citizens in Harris County (Houston)
- ❑ EPA is investigating whether TCEQ violated Title VI by renewing Title V permit of Oxbow Calcining
- ❑ As of November, TCEQ is launching a new public outreach program for new projects and permit renewals
 - Applicants must fill out public outreach form and develop a Public Involvement Plan (PIP)
 - Requires the use of EJSCREEN to assess demographics near the project
 - Applies to projects near all major Texas cities, West Texas, Texas Panhandle, and along the Mexican border





Environmental Justice Actions

- ❑ Illinois: IEPA rescinded a permit issued for Reserve Management Group after pressure from EPA to require additional EJ review
- ❑ Michigan's permitting program is the focus of a new investigation by EPA to determine if the program violates Civil Rights Act Title VI
- ❑ Alabama: Sierra Club and other groups are protesting the Title V renewal for Alabama Power's Plant Barry on EJ and other grounds
- ❑ California: EPA proposed to disapprove the San Joaquin Valley Air District's SIP to address the 2012 PM_{2.5} NAAQS on EJ grounds. The district and California Air Resources Board subsequently withdrew SIP



Summary of EJ Risks

- ❑ Environmental Justice concerns are permeating every aspect of environmental regulation and policy across all media and agencies.
- ❑ Billions of federal dollars are being made available for hyper-local and fence line monitoring programs and to promote public engagement.
- ❑ Tools are being rolled out almost monthly to make data available to the public and government agencies.
- ❑ NGO's are bringing EJ concerns to all complaints against proposed permit actions because of the hot-button nature of the topic.
- ❑ When EJ concerns are raised, simple compliance with permit requirements may no longer be enough.
- ❑ Cumulative impact assessment requirements are coming, but in what form is not yet known.

What can you do?

- ❑ Be proactive and tell your own story: Engage now, not later
- ❑ The data is out there – context is important
- ❑ Know your emissions profile
- ❑ Know your EJ footprint
 - Community
 - Environmental challenges
 - Regulatory environment



Questions or Comments?

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