



# **EPA's Focus on Environmental Justice: New Obstacles For Permitting**

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# OUTLINE OF TOPICS

- Title VI of the Civil Rights Act
- EPA's EJ Regulations – 40 CFR Part 7
- Executive Orders
- EPA Guidance
- EPA EJ Screen
- Considerations, Obstacles, and Uncertainties in Site Selection and Permitting

Available at [www.bswenviroblog.com](http://www.bswenviroblog.com)



# Civil Rights Act of 1964 – Title VI

- Section 601: “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.” 42 U.S.C. §2000d.
- *Alexander v. Sandoval*, 532 U.S. 275 (2001):
  - Private individuals may sue to enforce §601
  - Directly reaches only intentional discrimination



# Civil Rights Act of 1964 – Title VI

- Section 602: Each Federal department and agency which extends Federal financial assistance to any program or activity “is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. §2000d-1.
- *Alexander v. Sandoval*, 532 U.S. 275 (2001):
  - “Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under §602.”
- Some question whether Section 602 regulations may address non-intentional discrimination
  - Most assume they may, but Supreme Court statements seem to suggest otherwise



# EPA Regulations – 40 CFR Part 7

- 40 CFR §7.15
  - Applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance
- General prohibition - 40 CFR §7.30
  - No person shall be excluded from participation in, denial of benefits of, and discrimination under any program or activity receiving EPA assistance on the basis of race, color, or national origin.
- Specific prohibitions - 40 CFR §7.30
  - Recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination
  - Recipient shall not choose “a site or location of a facility that has the purpose or effect of ... subjecting [persons] to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin.”



# EPA Regulations – 40 CFR Part 7

- Complaint process
  - EPA conducts “preliminary investigation” of a complaint
  - May accept, reject, or refer
  - Will attempt to resolve through an Informal Resolution Agreement
  - EPA may issue Preliminary Findings
    - Will include recommendations to achieve compliance
  - Recipient may file a response to complaint or Preliminary Findings
  
- Finding of non-compliance
  - Recipient can agree with findings, take corrective actions
  - Recipient can contest the findings
  
- Remedies
  - Terminate or refuse to award or to continue assistance
  - Recipient can request a hearing
    - Outcome subject to judicial review under APA
  - Use any other means authorized by law to get compliance
    - Includes referral to DOJ
  
- Filing a complaint “does not suspend an issued permit.” 65 FR 39651 (6/27/00)



# EPA Regulations – 40 CFR Part 7

FY22	Active	04R-22-R6	Louisiana Dept. of Envir. Quality (St. James Parish)	02/02/2022	Title VI: Race	Pending: In Informal Resolution Negotiation	<a href="#">04R-22-R6 Complaint (pdf)</a> (7.65 MB) <a href="#">04R-22-R6 Acceptance REC (pdf)</a> (150.42 KB) <a href="#">2022 10 12 LDEQ LDH 01R-22-R6, 02R-22-R6, 04R-22-R6 Letter (pdf)</a> (1017.92 KB)
FY22	Active	01R-22-R6	Louisiana Dept. of Envir. Quality (St. John the Baptist Parish)	01/20/2022	Title VI: Race	Pending: In Informal Resolution Agreement Negotiation	<a href="#">01R-22-R6 Complaint (pdf)</a> (2.65 MB) <a href="#">01R-22-R6 Acceptance REC (pdf)</a> (150.42 KB) <a href="#">2022 10 12 LDEQ LDH 01R-22-R6, 02R-22-R6, 04R-22-R6 Letter (pdf)</a> (1017.92 KB)
FY22	Active	02R-22-R6	Louisiana Dept. of Health	01/20/2022	Title VI: Race	Pending: In Informal Resolution Agreement Negotiation	<a href="#">02R-22-R6 Complaint (pdf)</a> (2.65 MB) <a href="#">02R-22-R6 Acceptance REC (pdf)</a> (143.06 KB) <a href="#">2022 10 12 LDEQ LDH 01R-22-R6, 02R-22-R6, 04R-22-R6 Letter (pdf)</a> (1017.92 KB)

FY22	Active	06RNO-22-R6	Texas Comm. on Envir. Quality (Concrete Plant)	05/17/2022	Title VI: Race, National Origin	Pending: In Informal Resolution Negotiation	<a href="#">06RNO-22-R6 Complaint (pdf)</a> (614.14 KB) <a href="#">06RNO-22-R6 REC Acceptance (pdf)</a> (123.93 KB) <a href="#">06RNO-22-R6 REC Tolling Ltr (pdf)</a> (226.8 KB)
FY22	Active	05RNO-22-R6	Texas Comm. on Envir. Quality (Harris County)	04/05/2022	Title VI: Race, National Origin	Pending: In Informal Resolution Negotiation	<a href="#">05RNO-22-R6 Complaint (pdf)</a> (4.88 MB) <a href="#">05RNO-22-R6 REC Acceptance (pdf)</a> (123.93 KB) <a href="#">05RNO-22-R6 REC Tolling Ltr (pdf)</a> (226.8 KB)
FY21	Active	02R-21-R6	Texas Comm. on Envir. Quality	08/18/2021	Title VI: Race	Pending: In Informal Resolution Agreement Negotiation	<a href="#">02R-21-R6 Complaint (pdf)</a> (4.27 MB)



# Executive Orders

EO 12898 - Feb. 11, 1994

Federal Register

Vol. 59, No. 32

Wednesday, February 16, 1994

## Presidential Documents

Title 3—

Executive Order 12898 of February 11, 1994

The President

### Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

#### Section 1-1. Implementation.

**1-101. Agency Responsibilities.** To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall 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 in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

**1-102. Creation of an Interagency Working Group on Environmental Justice.** (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

- Each agency shall make achieving environmental justice part of its mission
- Must ...
  - Identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations
  - Develop an agency-wide environmental justice strategy
  - 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





# Executive Orders

EO 13985 - Jan. 20, 2021

Federal Register / Vol. 86, No. 14 / Monday, January 25, 2021 / Presidential Documents 7009

## Presidential Documents

Executive Order 13985 of January 20, 2021

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

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

**Section 1. Policy.** Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

By advancing equity across the Federal Government, we can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone. For example, an analysis shows that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional \$5 trillion in gross domestic product in the American economy over the next 5 years. The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential. Consistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

**Sec. 2. Definitions.** For purposes of this order: (a) The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

- Nation deserves an “ambitious whole-of-government equity agenda”
- The term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment
- Requires
  - An equity assessment in federal agencies
  - Allocation of federal resources to advance fairness
  - Promotion of equitable delivery of government benefits and equitable opportunities



# Executive Orders

Federal Register / Vol. 86, No. 19 / Monday, February 1, 2021 / Presidential Documents 7619

## Presidential Documents

Executive Order 14008 of January 27, 2021

### Tackling the Climate Crisis at Home and Abroad

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

#### PART I—PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY

**Section 101. Policy.** United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.

**Sec. 102. Purpose.** This order builds on and reaffirms actions my Administration has already taken to place the climate crisis at the forefront of this Nation's foreign policy and national security planning, including submitting the United States instrument of acceptance to rejoin the Paris Agreement. In implementing—and building upon—the Paris Agreement's three overarching objectives (a safe global temperature, increased climate resilience, and financial flows aligned with a pathway toward low greenhouse gas emissions and climate-resilient development), the United States will exercise its leadership to promote a significant increase in global climate ambition to meet the climate challenge. In this regard:

(a) I will host an early Leaders' Climate Summit aimed at raising climate ambition and making a positive contribution to the 26th United Nations Climate Change Conference of the Parties (COP26) and beyond.

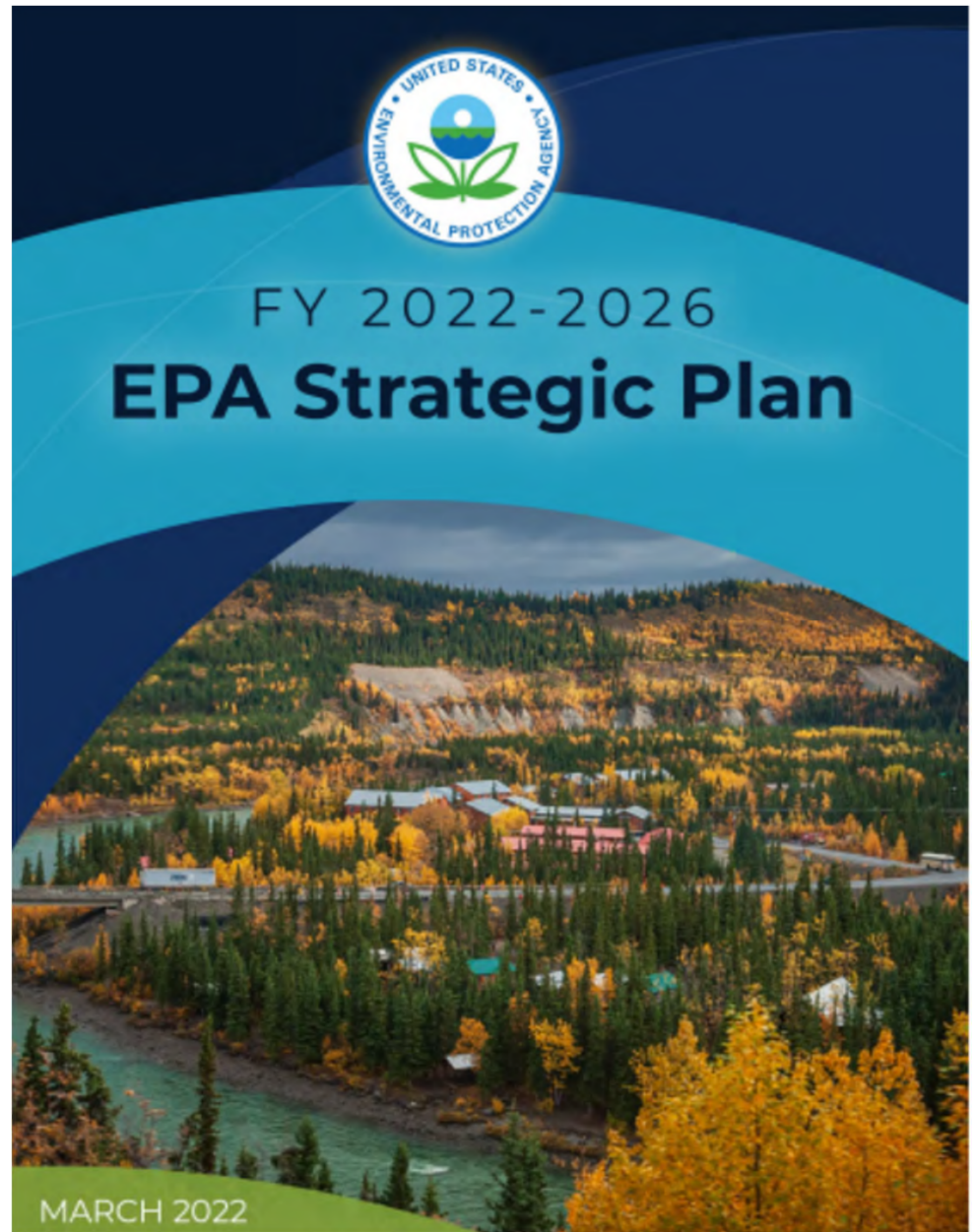
(b) The United States will reconvene the Major Economies Forum on Energy and Climate, beginning with the Leaders' Climate Summit. In cooperation with the members of that Forum, as well as with other partners as appropriate, the United States will pursue green recovery efforts, initiatives to advance the clean energy transition, sectoral decarbonization, and alignment of financial flows with the objectives of the Paris Agreement, including with respect to coal financing, nature-based solutions, and solutions to other climate-related challenges.

## EO 14008 (Jan. 27, 2021)

- Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.
- Establishes the White House Environmental Justice Advisory Council
- Provides advice to White House “on how to increase the Federal Government’s efforts to address current and historic environmental injustice
- Creates Justice40 Initiative
- Goal of “40 percent of the overall benefits flow to disadvantaged communities”



# EPA Guidance





# EPA Guidance



## EPA Mission

To Protect Human Health and the Environment

## Principles

- Follow the Science
- Follow the Law
- Be Transparent
- Advance Justice and Equity

## 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

# FY 2022-2026 EPA Strategic Plan

**MISSION:** To Protect Human Health and the Environment

**PRINCIPLES:** Follow the Science, Follow the Law, Be Transparent, Advance Justice and Equity





# EPA Guidance



## Goal 2:

### Take Decisive Action to Advance Environmental Justice and Civil Rights<sup>22</sup>

*Achieve tangible progress for historically overburdened and underserved communities and ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in developing and implementing environmental laws, regulations, and policies.*



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

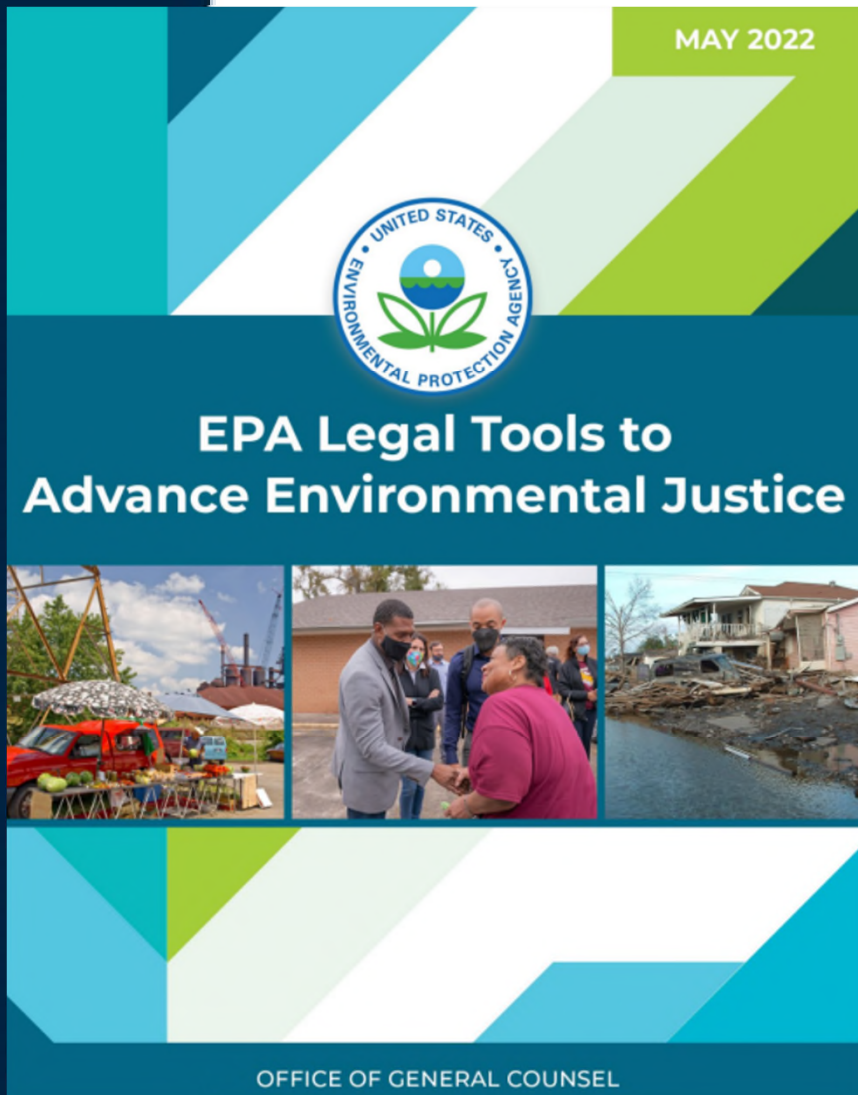
**Objective 2.1:** Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels

**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



# EPA Guidance



## EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum

January 2023

Office of General Counsel

U.S. Environmental Protection Agency

Washington, D.C. 20460

This document discusses a variety of federal statutory and regulatory provisions but does not itself have legal effect and is not a substitute for those provisions and any legally binding requirements that they may impose. It does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits to any person. To the extent there is any inconsistency between this document and any statutes, regulations or guidance, the latter take precedence. EPA retains discretion to use or deviate from this document as appropriate.

Publication No.: 360R22002

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# EPA Guidance



Environmental Protection Agency

*Interim*

**Environmental Justice and Civil Rights in  
Permitting  
Frequently Asked Questions**

August 2022

Office of General Counsel  
Office of Policy



# EPA Guidance

## 11

### What is a disparate impact analysis under Title VI?

- **Disparate impact:** Does a recipient's criteria or method of administering its program or activities adversely and disparately affect members of a group identified by race, color, or national origin?
  - **Adverse Impacts:** Is there an adverse impact of the policy or practice? Adverse impacts could include harmful health effects, odor, noise, decrease in property values, etc.
  - **Disproportionality:** Is a disproportionate share of the adversity borne based on race, color, or national origin (including LEP status)? Disparity is a fact-specific inquiry that involves identifying an appropriate measure.<sup>29</sup>
  - **Causation:** Is there a causal link between the recipient's policy or practice and the disparate impact?<sup>30</sup>
- **Justification:** If so, is there a substantial legitimate justification for the policy or practice? This question is unique to a disparate impact analysis. See [FAQ #13](#).
- **Less discriminatory alternative:** Even if there is a substantial legitimate justification for the policy or practice causing the disparate impact, is there an alternative practice that may be comparably effective with less disparate impact?<sup>31</sup>





# EPA Guidance

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How would EPA consider “cumulative impacts” within the Title VI disparate impact analysis?

In the context of Title VI investigations, EPA considers cumulative impacts when evaluating whether there is an adverse impact from the recipient’s policy or practice.<sup>32</sup> That is, EPA considers whether any adverse impact caused by the permitting decision—and borne disproportionately by persons on the basis of race, color, or national origin (including LEP status)—may be even greater considering cumulative impacts from other chemical and non-chemical stressors.

*“Cumulative impacts” refers to the total burden – positive, neutral, or negative – from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time. Cumulative impacts include contemporary exposures in various environments where individuals spend time and past exposures that have lingering effects. Total burden encompasses direct health effects and indirect effects to people through impacts on resources and the environment that affect human health and well-being. Cumulative impacts provide context for characterizing the potential state of vulnerability or resilience of the community, i.e., their ability to withstand or recover from additional exposures under consideration.<sup>34</sup>*



# EPA Guidance

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What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?

- If there are no mitigation measures the permitting authority can take, whether within or outside the permitting program, that can address the disparate impacts, and there is no legally sufficient justification for the disparate impacts, denial of the permit may be the only way to avoid a Title VI violation. Whether denial of a permit is required to avoid a Title VI violation is a fact-specific determination that would take into account an array of circumstances, including whether the facility will have an unjustified racially disproportionate impact, as well as the less discriminatory alternatives available.<sup>38</sup>



# EPA Guidance

## 14

What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?

### Permit terms:

- Enforceable requirements for continuous compliance monitoring equipment (e.g., opacity cameras) to ensure proper operation of control devices, compliance with permitted limits, and adherence to industry best practices.
- Enhancements to compliance assurance provisions, including additional continuous or periodic monitoring, recordkeeping, or reporting requirements.
- Establishment of a public-facing website with all relevant compliance information about the facility and real-time data measurements.
- Additional pollution controls or more stringent limits.
- Inclusion of enforceable work practices, operating plans, and/or best practices for minimizing emissions and/or discharges (e.g., a fugitive emission plan).
- Incorporating modeling assumptions as legally and practically enforceable limits or work practices (e.g., hours of operation).
- Expansion of buffers or modification of operational hours.

### The use of non-environmental authorities:

- Use public health authority to implement a mobile health monitoring program in the affected community.
- Use transportation authority to develop new traffic plan to reduce diesel emissions in the affected community.
- Use public health authority to establish a citizen hotline with a 24-hour response time.

### Other potential commitments:

- Third-party monitoring of community complaints.
- Support for public transparency of monitoring information, including community-driven monitoring.
- Other enforceable agreements (e.g., community benefit agreements).



# EPA Guidance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

December 22, 2022

OFFICE OF  
AIR AND RADIATION

## MEMORANDUM

**SUBJECT:** Principles for Addressing Environmental Justice in Air Permitting

**FROM:** Joseph Goffman  
Principal Deputy Assistant Administrator  
Office of Air and Radiation

JOSEPH  
GOFFMAN Digitally signed by  
JOSEPH GOFFMAN  
Date: 2022.12.22  
11:23:37 -05'00'

**TO:** Air and Radiation Division Directors  
Regions I-X



# EPA Guidance

- Provides an “interim operating framework” to address EJ in CAA context
  - Encourages sharing with States to facilitate application in their air permitting actions
  
- Framework
  - Identify communities with potential environmental justice concerns
  - Engage early in the permitting process to promote meaningful participation and fair treatment
  - Enhance public involvement throughout the permitting process
  
  - Conduct a “fit for purpose” environmental justice analysis when a permitting action “may result” in disproportionality high and adverse effect
    - Evaluation of demographic data indicating vulnerabilities in the affected population
    - Evaluation of existing public health data about the affected community
    - Evaluation of the permitting action’s non-health adverse effects (e.g., noise, odor, and traffic)
    - Evaluation of existing environmental data, including air monitoring / modeling, or data from other media
    - Evaluation of the facility’s compliance record
    - Evaluation of the cumulative impact of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community
    - Evaluation of the potential effects of the permitting action under consideration on the health of a population and the distribution of those effects within the population
  
  - Minimize and mitigate disproportionately high and adverse effects associated with the permit action to promote fair treatment
  - Provide federal support throughout the air permitting process
  - Enhance transparency throughout the air permitting process
  - Build capacity to enhance the consideration of environmental justice in the air permitting process



# EPA Guidance

- Provides an “interim operating framework” to address EJ in CAA context
  - Encourages sharing with States to facilitate application in their air permitting actions
  
- Framework
  - Identify communities with potential environmental justice concerns
  - Engage early in the permitting process to promote meaningful participation and fair treatment
  - Enhance public involvement throughout the permitting process
  
  - Conduct a “fit for purpose” environmental justice analysis when a permitting action “may result” in disproportionality high and adverse effect
    - Evaluation of demographic data indicating **vulnerabilities** in the affected population
    - Evaluation of existing public health data about the affected community
    - Evaluation of the permitting action’s non-health adverse effects (e.g., noise, odor, and traffic)
    - Evaluation of existing environmental data, including air monitoring / modeling, or data from other media
    - Evaluation of the facility’s compliance record
    - Evaluation of the **cumulative impact** of the permitting action under consideration together with impacts from other regulated and **non-regulated sources of pollution** in the community
    - Evaluation of the potential effects of the permitting action under consideration on the health of a population and the distribution of those effects within the population
  
  - Minimize and mitigate disproportionately high and adverse effects associated with the permit action to promote fair treatment
  - Provide federal support throughout the air permitting process
  - Enhance transparency throughout the air permitting process
  - Build capacity to enhance the consideration of environmental justice in the air permitting process

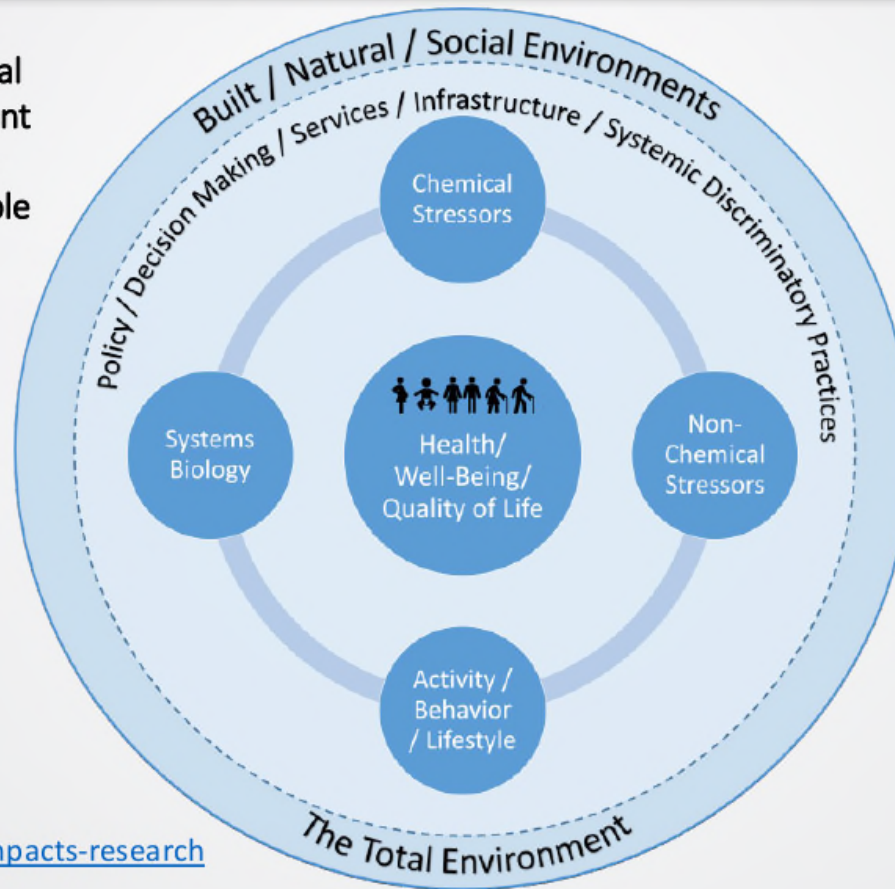


# EPA Guidance



## Cumulative Impacts Conceptual Diagram

Combined influences on the total (built, natural, social) environment for individuals, geographically defined communities, or definable population groups



[epa.gov/healthresearch/cumulative-impacts-research](https://epa.gov/healthresearch/cumulative-impacts-research)

Adapted from Tulve et al., 2016



# EPA Guidance



## Cross-Cutting Research Priority



### Cumulative Impacts

- Overburdened communities face cumulative impacts from:
  - chemical stressors in environmental media (air, water, land)
  - non-chemical stressors, including social determinants of health.
  - Changing climate exacerbates cumulative impacts.
- It is critical to bolster the scientific basis for identifying actions to improve community health and well-being, and to select, implement, and evaluate such actions.





# EPA Guidance

## Social Determinants of Health

### What are social determinants of health?

Social determinants of health (SDOH) are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.

SDOH can be grouped into 5 domains:



[Economic Stability](#)



[Education Access and Quality](#)



[Health Care Access and Quality](#)



[Neighborhood and Built Environment](#)



[Social and Community Context](#)



[Download SDOH\\_graphic \(141.23 KB\)](#)

Suggested citation



Source: US DHHS

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# EPA's EJ Screen

- EJ mapping and screening tool
  - Based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and report
- Developed to highlight places that may be candidates for further review, analysis, or outreach
- No mandate or guidance expressed or implied that the tool or its underlying data should be used
- Caveats
  - Not a detailed risk analysis
  - Tool examines some of the relevant issues related to EJ
  - There is uncertainty in the data included



# EPA's EJ Screen

**EPA EJScreen** EPA's Environmental Justice Screening and Mapping Tool (Version 2.11)

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



# EPA's EJ Screen



## EJScreen Report (Version 2.11)



3 miles Ring Centered at 30.264405,-97.743473, TEXAS, EPA Region 6

Approximate Population: 181,656

Input Area (sq. miles): 28.27

(The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	Value	State Avg.	%ile in State	USA Avg.	%ile in USA
<b>Pollution and Sources</b>					
Particulate Matter 2.5 ( $\mu\text{g}/\text{m}^3$ )	9.89	9.5	66	8.67	83
Ozone (ppb)	38.6	40	37	42.5	24
Diesel Particulate Matter* ( $\mu\text{g}/\text{m}^3$ )	0.281	0.211	75	0.294	50-60th
Air Toxics Cancer Risk* (lifetime risk per million)	30	31	83	28	80-90th
Air Toxics Respiratory HI*	0.35	0.35	69	0.36	60-70th
Traffic Proximity (daily traffic count/distance to road)	1500	570	91	760	88
Lead Paint (% Pre-1960 Housing)	0.22	0.14	71	0.27	49
Superfund Proximity (site count/km distance)	0.014	0.084	15	0.13	10
RMP Facility Proximity (facility count/km distance)	1.1	0.94	72	0.77	77
Hazardous Waste Proximity (facility count/km distance)	1.6	0.72	86	2.2	65
Underground Storage Tanks (count/km <sup>2</sup> )	4.4	2.3	82	3.9	74
Wastewater Discharge (toxicity-weighted concentration/m distance)	0.00029	0.38	33	12	39
<b>Socioeconomic Indicators</b>					
Demographic Index	42%	46%	47	35%	66
Supplemental Demographic Index	15%	17%	50	15%	60
People of Color	45%	59%	38	40%	63
Low Income	34%	33%	52	30%	60
Unemployment Rate	5%	5%	57	5%	55
Limited English Speaking Households	4%	7%	55	5%	72
Less Than High School Education	8%	16%	38	12%	48
Under Age 5	4%	7%	33	6%	39
Over Age 64	7%	13%	27	16%	16
Low Life Expectancy	13%	20%	2	20%	4



## Considerations

- EJ adds uncertainty to site selection/permitting
- Need proactive effort in early stages of planning process
- EJ claims...
  - will likely be made regardless of law/facts
    - To some, no site/facility is a good one
    - Claims made tactically or to galvanize opposition
  - may arise in permit comment period, administrative or judicial appeals of permit decisions, or post-permit Part 7 complaints
  - must still be analyzed based on ...
    - Title VI and case law
    - EPA's regulations and policies
    - Facts/documents placed in administrative record



# Obstacles / Uncertainties

- EPA's new focus on EJ
  - Application of 'relaxed' Title VI standards
  - Community awareness, participation, empowerment
- Facility siting decisions
- Permitting
  - CIA / HIA
    - Currently uncertain criteria and/or methodology
    - Consideration of factors beyond control of permitting agency, such as social determinants of health
  - Mitigation measures to reduce emissions or pollutant discharges
  - Possible denial of permit



# Site Selection

- Consider EJ in initial site selection
- Build a good site selection team
  - Composition/cost can vary depending on ...
    - Size of project/capital costs
    - Type of facility
    - Available sites
  - Possible members could include ...
    - Real estate, economist, environmental professionals
    - Counsel, modeler, statistician, toxicologist
  - Team needs to understand EJ considerations
- Prepare set of objective criteria for site evaluation
  - Economic criteria, such as ...
    - Costs, infrastructure, access to transportation
  - Environmental criteria, such as ...
    - Wetlands, attainment status
  - Other criteria, such as ...
    - Zoning, population in proximity



# Site Selection

- For each site selected for evaluation ...
  - Evaluate based on chosen objective criteria
  - Research, understand, and document the demographics of surrounding area
    - 1-mile, 3-mile, and perhaps 5-mile radius
    - EJScreen needs to be reviewed and addressed
  
- Assess potential impact of proposed facility on nearby population
  - Modeling of emissions (screening level or in-depth)
    - Follow EPA/agency modeling protocols
    - Ensure model receptors are within nearby community
    - Toxicologist to review potential impact on community
  - Effect of noise, odors, traffic, waste generation
  - Cumulative impact analysis ???
  
- Prepare report(s) of site selection and/or assessment process
  - Could be more than one document or report





# Site Selection





# Permitting

- Reviewing court may only review the administrative record
  - Facts/documents not in the record can not be reviewed
  - So, all supporting facts must be included in administrative record
  - Appendices to application, studies / reports, response to comments
  
- Build the administrative record to establish no adverse impact
  - Submit the site selection report
  - Submit modeling results
    - Document that NAAQS/HAP AAS are met
      - NAAQS: Protective of public health with an adequate margin of safety
    - Include graphic/figure showing modeled receptors in community
  - Submit other studies (e.g., noise, odor) showing no effect
  - Provide any other supporting facts or documents
    - Toxicologist's report regarding modeled receptors in community
    - EPA's own comments regarding limited use of EJScreen/NATA
  
- Public comment period
  - Submit your own comments in support
  - Respond to major adverse comments in a written submittal
  - Include any supporting documents



# Environmental Justice: Origins, Background, and Site Selections Considerations

Paper available at:

Washington Legal Foundation

<https://www.wlf.org/2021/02/26/publishing/environmental-justice-origins-background-and-site-selection-considerations/>

and

BSW Environmental Blog

<https://bswenviroblog.com>



## **QUESTIONS??**

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