

REGFORM Air Seminar

November 9, 2021

Environmental Justice: Information, Articles, Links, and Presentation Summaries

Below are federal websites, EJ summaries, news articles, and other information that I have compiled over the past nine months on the issue of Environmental Justice.

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Federal Websites

Environmental Justice (EPA Website)

<https://www.epa.gov/environmentaljustice>

[**Note:** Website takes you to the EJ definition, EJScreen, EPA Strategy, Advisory Panels, Community outreach, EPA's Action Agenda, Grants and Resources, NEPA activities, ARPA funding, and more].

Environmental Justice (defined by EPA):

"Environmental justice 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."

Link to USEPA's EJSCREEN: Environmental Justice Screening and Mapping Tool

<https://www.epa.gov/ejscreen>

National Environmental Justice Advisory Council

<https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>

White House Environmental Justice Advisory Council

<https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>

Executive Order (No. 14008) Tackling the Climate Crisis at Home and Abroad (January 27)

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

Environmental Justice -- Summaries

Strengthening Enforcement in Communities with Environmental Justice Concerns (USEPA Memorandum) (April 30)

[https://www.epa.gov/sites/production/files/2021-](https://www.epa.gov/sites/production/files/2021-04/documents/strengtheningenforcementincommunitieswiththejconcerns.pdf)

[04/documents/strengtheningenforcementincommunitieswiththejconcerns.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/strengtheningenforcementincommunitieswiththejconcerns.pdf) (EPA Memo)

<https://thehill.com/policy/energy-environment/551792-epa-official-directs-agency-to-ramp-up-enforcement-in-communities> (The Hill) (May 4)

<https://www.bakerbotts.com/thought-leadership/publications/2021/may/news-the-time-get-ready-for-increased-epa-inspections-in-ej-communities> (Baker Botts legal blog) (May 6)

[**Note:** EPA's acting director of OECA (Lawrence Starfield) in an April 30 Memorandum directs staff throughout the agency to advance the protection of environmental justice (EJ) communities by boosting inspections and enforcement facilities in equity areas while increasing engagement with residents living in such locations.

The goals are:

a. The first goal is to **increase inspections** and evaluate programmatic inspections that can address the most serious threats, using national initiatives. "Regional input will be critical to this evaluation," he writes. "We will then need to understand the number and nature of such inspections that have occurred in communities with EJ concerns."

b. The second goal is to **strengthen enforcement in EJ communities overburdened by pollution by resolving environmental noncompliance through remedies with tangible benefits for the community**. This includes preventing further pollution, mitigating past harms and seeking penalties for violations with early and innovative relief such as monitoring of pollution at the fence-line of industrial facilities.

c. The third goal in Starfield's memo is to **increase engagement with communities about enforcement cases** that directly impact them, including by providing them more information about facilities, pollution, and enforcement action, and increasing their awareness of tools such as EJSCREEN and compliance history data.]

White House Environmental Justice Advisory Council Announces Public Meetings (Association of State Drinking Water Administrators) (April 22)

<https://flip.it/g0pWM4> (ASDWA)

<https://www.govinfo.gov/content/pkg/FR-2021-04-20/pdf/2021-08107.pdf> (FR notice) (4-20)

<https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council> (link to White House EJ Advisory Council)

Environmental Justice in the Biden Administration: Early Actions Draw First Bold Lines (Holland & Knight legal blog) (April 20)

<https://www.hklaw.com/en/insights/publications/2021/04/environmental-justice-in-the-biden-administration>

[**Note:** The Biden Administration in its first 90 days has unambiguously articulated a commitment to the issue of environmental justice.

The actions of the White House and EPA include:

a. Executive Order (E.O. 14008).

b. Two new White House councils to address EJ implementation and solicit expert advice.

c. Significant funding for EJ-related programs in the recently enacted \$1.9 trillion American Rescue Plan Act

d. EPA Administrator Michael Regan directed all offices within the Agency to: "[s]trengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution [t]ake immediate ... steps to incorporate environmental justice considerations into their work ... in regulatory development processes [t]ake immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities, and consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law."]

Environmental Justice Regulatory Updates (Trinity Consultants EHS Quarterly) (June)
<https://trinityconsultants.actonservice.com/acton/rif/33587/s-0af1-2107/-/1-011a:7216/1-011a/showPreparedMessage?sid=TV2:i7zWSqotO>

[**Note:** Trinity Consultants magazine put together a great article on Environmental Justice. A series of short, relevant pieces over eight pages. The articles get right to the point and discuss EJ policy, tools, screening.]

Achieving Biden's Environmental Justice Agenda (*The Environmental Forum*, a publication of the Environmental Law Institute) (May/June)

<https://www.eli.org/the-environmental-forum/achieving-bidens-ej-agenda>

[**Note:** The Environmental Law Institute (ELI) "Environmental Forum" has an entire issue devoted to "Race and Regulation." This article is a general overview of the Biden Administration's ambitious goal: federal policymaking to prioritize environmental justice. This article addresses the key challenges to accomplishing the administration's stated goal and identifies discrete actions that the government could take to update its EJ data collection capabilities; establish EJ as a key component of environmental enforcement strategy; and incorporate EJ criteria into siting, rulemaking, and permitting.]

White House Pilots Host of EPA Programs Under Justice40 Benefit Mandate

<https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf> (White House Press Release)

<https://grist.org/politics/biden-environmental-justice-epa-spending-american-rescue-plan/> (Grist)

<https://www.edf.org/media/interim-justice40-guidance-demonstrates-biden-administration-commitment-advancing> (Environmental Defense Fund) (July 23)

[**Note:** The White House is targeting a host of EPA infrastructure funding and other programs for a government-wide pilot project under its Justice40 initiative. Eligible spending could include money appropriated during fiscal year 2021, which began in October under the Trump administration and runs through September. The policy aims to ensure that 40 percent of the benefits from certain types of federal spending flow to EJ communities (though that is not well-defined). EPA programs include the drinking water state revolving fund, the clean water state revolving fund, the brownfields program, the Superfund remedial program, the Diesel Emissions Reduction Act program and the reducing lead in drinking water program. Variables that could define an EJ community include environmental factors (high cumulative pollution), economic factors (jobs lost to the energy transition), racial factors (high levels of home segregation) and cultural factors (linguistic isolation)].

White House, Office of Management and Budget Release Interim Guidance for Justice40 Implementation (White House OMB release)

<https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf> (July 20)

<https://www.sidley.com/en/insights/newsupdates/2021/07/white-house-office-of-management-and-budget-release-interim-guidance> (Sidley law firm) (July 29)

[**Note:** On July 20, 2021, the Acting Director of the Office of Management and Budget (OMB), Chair of the White House Council on Environmental Quality (CEQ), and National Climate Advisor issued Interim Implementation Guidance for the Justice40 Initiative (the Interim Guidance) — a governmentwide plan established by Executive Order 14008 to deliver 40% of the overall benefits of climate investments to disadvantaged communities and track performance toward that goal through the establishment of an Environmental Justice Scorecard.

EPA Memo Outlines "Cumulative Impact" Guidance to Ensure State Compliance with Civil Rights Law (EPA Memo) (September 20)

<https://www.epa.gov/office-inspector-general/report-improved-epa-oversight-funding-recipients-title-vi-programs-could>

[**Note:** USEPA is detailing its plans to develop a "cumulative impacts" guidance by the end of next year to help its investigators and others determine whether environmental permitting decisions by state and other recipients of agency funds are discriminatory. The details are contained in a September 20th memo from the Office of General Counsel (OGC) and External Civil Rights Compliance Office (ECRCO) to OIG, which faulted the agency's enforcement of Title VI of the Civil Rights Act in a scathing report issued a year ago.]

Articles and Internet News -- Environmental Justice

EPA Lawyer Vows Use Of 'Affirmative Authority' To Enforce Civil Rights Law (American Bar Association - Environmental fall conference) (October 14-15)

https://www.americanbar.org/groups/environment_energy_resources/ (Event was October 14-15) (general website only)

[**Note:** A top USEPA lawyer confirmed that the EPA will utilize its "affirmative authority" to enforce its obligations to ensure that recipients of EPA funds comply with nondiscrimination requirements in the Civil Rights Act, reflecting the Biden administration's focus on integrating environmental justice (EJ) into all government decisions. The comment was made at the October 14 American Bar Association (ABA) Section on Energy Environmental Resources annual fall event. The attorney indicated that the agency's use of affirmative authority to enforce the law in the past "has been scant and that EPA has never referred" a case to the DOJ to withhold federal funding. But that is going to change. Two other speakers at the session from the DOJ and DOT confirmed similar efforts to elevate Environmental Justice and take a "fresh look" at comprehensive federal legal tools. However, a former DOJ official in the Trump administration said that revoking federal funds would likely have perverse outcomes.]

Under EPA's New "Strategic Plan," Companies Should Ready for Increased Enforcement and Data Collection in Vulnerable Communities (Baker Botts legal blog) (October 7)

<https://www.epa.gov/planandbudget/strategicplan> (EPA Strategic Plan - 2022-26)
[https://communications.bakerbotts.com/27/4145/october-2021/baker-botts-environmental-update--under-epa-plan--companies-should-ready-for-increased-enforcement-and-data-collection-in-vulnerable-communities\(3\).asp?sid=653f070f-1eb3-4410-bdf7-d9910f5131a6](https://communications.bakerbotts.com/27/4145/october-2021/baker-botts-environmental-update--under-epa-plan--companies-should-ready-for-increased-enforcement-and-data-collection-in-vulnerable-communities(3).asp?sid=653f070f-1eb3-4410-bdf7-d9910f5131a6)

[**Note:** The USEPA's new Draft "Strategic Plan" for 2022-2026 amplifies the Biden Administration's commitment to environmental justice by outlining how vulnerable communities will be prioritized in the agency's regulatory programs and enforcement efforts. Looking ahead, companies are well-served by undertaking their own proactive assessment of their environmental justice activities and community relationships, in addition to raising their awareness of permitting and expansion activities at neighboring facilities.]

Environmental Justice: DOJ Enforcement Priorities (video link to the presentation) (Bracewell legal blog) (October 1)

<https://bracewell.com/insights/environmental-justice-doj-enforcement-priorities#page=1>

[**Note:** Summary of the video below]

a. An assistant U.S. Attorney from New York (not speaking for the DOJ) said that a federal law definition of EJ could be helpful for enforcement in large part because there is "no legal definition for environmental justice in federal law." The attorney noted that many EJ issues do not stem from violations of any permit or law, but more often are connected to local zoning and economic development decisions.

[**RAW Note:** The federal definition most often cited comes from the EPA defines "Environmental Justice" as "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." The EPA statement comes from its EJ website. I don't think the definition is in guidance or rule.

b. According to the US Assistant Attorney, the DOJ cannot bring an EJ action against a company for a pollutant released lawfully under a permit, even if those emissions may cause disproportionate impacts. However, this is not likely to stop the DOJ from looking beyond permitted releases in order to consider cumulative impacts as they make enforcement decisions.

c. It was also noted that non-permitted releases often "escape the attention of the environmental laws." Although the government cannot necessarily bring an action based on non-permitted releases, a facility that has a high level of release in an area may become the focus point.

d. The Assistant US Attorney also noted that supplemental environmental projects (SEPs) are still banned by DOJ - but may once again become a popular settlement tool because a defendant can receive a substantial penalty reduction in exchange for an environmentally beneficial project in the impacted community.

e. However, Executive Order 14008 does require agencies to review "cumulative impacts" The EO mandates that "[a]gencies 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."

EPA Deputy Janet McCabe Confirms at ECOS Meeting EPA's Plan to Integrate EJ 'into all that we do' (Environmental Council of States (ECOS) fall meeting) (September 9)
<https://www.ecos.org/event/2021-ecos-fall-meeting/> (Presentations for ECOS) (Deputy McCabe had no PPT) (I sat in on the ECOS meeting)

[**Note:** EPA Deputy Administrator Janet McCabe says the agency will release a “more fleshed out plan” this fall on “integrating environmental justice into all that we do,” in response to directives by President Joe Biden to elevate EJ considerations throughout decision making. McCabe, EPA’s second-in-command, said there is “a lot we can and should be doing as we develop our rules” that includes not just making “sure voices are heard, but that we are using tools available to us to understand how our regulatory approaches advance or do not advance” bringing EJ to overburdened and under-resourced communities. McCabe noted a new state EJ work group (27 states), the work already being undertaken by EPA’s Office of Environmental Justice and its External Civil Rights Compliance Office. She added. that “advancing environmental justice is absolutely shared work” and critical to achieve “a cleaner, more equitable future,” reduce greenhouse gas emissions, “and deal with changes that are wreaking havoc, literally, on our communities.]

Scientists Struggle with how to use "cumulative risk" to account for risks faced by poor and minority communities (National Academy of Sciences) (webinar on anticipatory research) (September 1)

<https://www.nationalacademies.org/event/08-31-2021/anticipatory-research-for-epas-research-and-development-enterprise-to-inform-future-environmental-protection-the-road-ahead-sixth-committee-meeting#sectionFACA>

[**Note:** A committee meeting hosted by the NAS that included top EPA scientists addressed the struggle to advance the use of cumulative risk or impact analyses to better account for the risks faced by poor and minority communities. The committee is called (long name) "Anticipatory Research for EPA’s Research and Development Enterprise to Inform Future Environmental Protection: The Road Ahead." The seminar series addresses: "Scientific and Technical Advances for Assessing Cumulative Health Risks from Exposures to Multiple Stressors in Low-Income Communities and Communities of Color." (No short titles in the scientific world.)].

NGOs Launch Justice40 ‘Accelerator’ To Boost Access To EJ Funds (Grist) (August 26) // Justice40 Accelerator website)

<https://grist.org/equity/this-group-aims-to-fix-equity-blind-spot-in-government-funding-justice40/>

<https://www.justice40accelerator.org/>

<https://www.justice40accelerator.org/cohort-list>

[**Note:** The Justice40 Accelerator is making it easier for overburdened communities to access funding. This effort will provide 52 grassroots groups funds and other resources to help bolster their access to federal funding under the Biden administration’s initiative that seeks to earmark at least 40 percent of the benefits of clean infrastructure spending for overburdened communities. The initiative, supported by philanthropic contributions, is to help ensure that the federal funding gets to the places that need it the most. I don't see any Missouri groups among the 52 listed. This does not mean EJ money will not make its way to Missouri.]

One Year After Chicago EJ Civil Rights Complaint (NRDC Op-Ed) (August 20)

<https://www.nrdc.org/experts/gina-ramirez/one-year-after-chicago-ej-civil-rights-complaint>

[**Note:** The NRDC is celebrating the one-year anniversary of the complaint filed against the General Iron recycling facility move to the southeast side of Chicago. The EPA stepped in and asked city officials to perform an environmental justice analysis. Hunger strikes were crucial to the victory. The Chicago mayor committed to introducing an ordinance that addresses the cumulative impacts of pollution. Other community groups have become engaged in other areas of the city. Looking ahead to the two-year anniversary of our complaint, the article hopes for more progress against the toxic legacy, preventing new mining operations, and more investigations into General Iron's environmental violations. In short, they do not want another year to go by without holding the City of Chicago accountable for these actions.]

Power Plants and Neighboring Communities (EPA website and new effort to engage EJ communities)

<https://www.epa.gov/airmarkets/power-plants-and-neighboring-communities>

<https://www.epa.gov/system/files/documents/2021-07/power-plants-and-neighboring-communities-fact-sheet.pdf>

[**Note:** It sounds like a "Mr. Rogers" episode but it's a new effort by EPA as part of the Agency's commitment to Environmental Justice to empower citizens to use the EJ Screening tools to assess the health of their community from utility fossil fuel-fired plants. The focus is on the 3,400 fossil fuel-fired power plants, but any industry could be a future subject. In the description, EPA says it is seeking "fair treatment and meaningful involvement of all people ... and to help answer questions about environmental justice in the communities around power plants." EPA is providing webinar training on use of the EJ Screening tool and describes key environmental indicators on utility size, fuel type, and annual plant-level emissions of SO₂, NO_X, CO₂, and PM_{2.5} for neighboring communities located within three miles of each plant. The tools provide information on six key demographics: low-income, people of color, population with less than high school education, linguistically isolated populations, populations under age 5, and population over age 64.]

EPA announces \$50 million in new air monitoring funds (EPA website)

<https://www.epa.gov/newsreleases/epa-announces-additional-50-million-under-american-rescue-plan-enhance-air-pollution> (EPA website)

<https://www.pollutiononline.com/doc/epa-announces-an-additional-m-under-the-american-rescue-plan-to-enhance-air-pollution-monitoring-0001> (Pollution Online) (July 7)

[**Note:** EPA will make \$50 million in COVID-19 American Rescue Plan to finance improved air quality monitoring to help communities suffering disproportionately from both air pollution and the pandemic. The enhanced monitoring plan will include: a grants competition for community groups and air agencies; direct awards to air agencies for continuous monitoring of fine particulate matter (PM_{2.5}); and enhanced capacity for short-term community monitoring.]

Missouri DNR letter calls allegations it committed civil rights violations

'unsubstantiated' (Missouri Independent) (July 22)

<https://missouriindependent.com/2021/07/22/missouri-dnr-epa-civil-rights/>

[**Note:** The news article "sunshined" a May letter sent by then Director Carol Comer which asserted that claims that MDNR violated residents' civil rights "unsubstantiated and

conclusory.” The Independent recently received a copy. According to the article, Director Comer wrote: “The department did not, has not, and will not discriminate or retaliate against any individual or community of any protected class for any reason. ... The department will continue to comply with federal requirements by means other than those recommended by ECRCO.” EPA has an ongoing investigation by its External Civil Rights Compliance Office (ECRCO), which resulted in a preliminary finding that DNR lacked several key components of a non-discrimination program as required by Title VI of the Civil Rights Act.

The current acting director Dru Buntin, according to the article declined to comment on “pending legal matters.” The ECRCO investigation centers on a March 2020 Title V clean air operating permit renewal DNR granted to Kinder Morgan Transmix to operate a facility that separates fuel products into usable gasoline. The Great Rivers Environmental Law Center said DNR failed to follow civil rights requirements when it renewed the permit and asked it to study the disparate impacts of the pollution on the nearby minority communities.]

EPA Investigation Finds Missouri Out of Compliance With Federal Civil Rights Rules (The Examiner [and] St. Louis Public Radio) (April 29)

<https://news.stlpublicradio.org/health-science-environment/2021-04-29/epa-investigation-finds-missouri-out-of-compliance-with-federal-civil-rights-rules>

<https://www.examiner.net/story/news/2021/04/29/epa-investigation-finds-missouri-out-compliance-federal-civil-rights-rules/7398862002/>

[**Note:** According to a story in The Examiner (a Gannet / USA Today regional newspaper), EPA is investigating whether Missouri environmental regulators violated the civil rights of St. Louis residents by issuing an air pollution control permit to a fuel transport business located near predominantly Black neighborhoods. EPA has determined that MDNR is preliminarily out of compliance with regulations that requiring state agencies receiving money from the EPA to set up nondiscrimination programs. EPA claims that MDNR is in violation of Title V for failing to establish a nondiscrimination program as required by EPA rules. According to the Examiner, EPA’s finding says DNR “ignored concerns raised over the years about its failure to have in place a nondiscrimination program consistent with its long-standing legal obligations.” EPA is under pressure from the Office of Inspector General (OIG) to take steps to ensure that recipients of federal funds have such programs in place.

EPA is looking into a permit that DNR issued to Kinder Morgan Transmix to operate a facility to separate fuel products back into usable gasoline. The plant is on the Mississippi River near several predominantly Black South St. Louis neighborhoods. The permit requires self-reporting only if emission limits are exceeded. The Great Rivers Environmental Law Center submitted comments arguing that DNR failed to follow federal rules and asked the Agency to study the "disparate impacts" of air pollution on the heavily minority communities. DNR said such analyses were not required, prompting the group to file a complaint with EPA’s rights office arguing the low-income and minority residents near the facility would be “disproportionately exposed” to air pollution.

According to the article, a Great Rivers attorney told the Missouri Examiner that Title VI enforcement has been lax. EPA not only opened the probe but made a preliminary finding against DNR. The complaint noted that the neighborhood affected by Kinder Morgan is adjacent to 600 pollution sources, 11 of which are major. Great Rivers on behalf of the NAACP had filed comments on the draft permit in November 2019 saying DNR was not complying with Title VI. MDNR issued the permit last March without considering disparate impacts. EPA also found

that the DNR lacked a nondiscrimination program and a staff member in charge of overseeing nondiscrimination requirements -- in violation of federal rules. It also did not have an acceptable grievance procedure for residents filing civil rights complaints.

The DNR has 50 days from the issuance of a preliminary finding to agree or submit a response in opposition. If it fails to act, EPA will forward the case to the Department of Justice two weeks later. The second half of EPA's ongoing probe will focus more specifically on the Kinder Morgan air permit and whether it discriminated against the nearby residents. MDNR did not comment on the story.

Environmental Groups Across St. Louis Region Stress Unity In Push For Cleaner Air (St. Louis Public Radio) (July 25)

<https://news.stlpublicradio.org/health-science-environment/2021-07-25/environmental-groups-across-st-louis-region-stress-unity-in-push-for-cleaner-air>

[**Note:** Seven local environmental and community-based organizations from St. Louis and the Metro East gathered Saturday morning at the base of the McKinley Bridge to rally against air pollution in the region. The event drew scores of residents from both sides of the Mississippi River who are concerned about regional air quality. It was also a symbolic step to unify local communities in Missouri and Illinois that face similar air and respiratory challenges. The rally featured a march across the bridge and speakers from both sides of the river who often echoed each other's struggle against poor air.

Of note, **St. Louis Third Ward Alderman Brandon Bosley** suggested the city use some of its COVID relief money to install air monitoring in his community. "Therefore, when we have these conversations, we'll actually have some analytics to go on and we can see what's in our air, what we're breathing."]

Coalition of Environmental Justice and National Groups Celebrate as Equity Issues Advance (EarthJustice) (July 14)

<https://earthjustice.org/news/press/2021/coalition-of-environmental-justice-and-national-groups-celebrates-equity-advances-calls-on-biden-congress-to> (EarthJustice)

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/> (American Jobs Act - fact sheet) (March 31)

[**Note:** The Biden-Harris administration has put an unprecedented focus on environmental justice by directing all federal agencies to improve justice and strive to end environmental racism, by initiating **Justice40** to invest in disadvantaged communities, establishing the first **White House Environmental Justice Advisory Council**, creation of an **Inter-agency EJ council**, **Climate Change EO**, and passage of the **American Rescue Plan** (includes money for EJ). More to come including potentially the American Jobs Act (infrastructure) which incorporates many EJ principles.]

A groundbreaking environmental justice bill is poised to become law (Grist) (March 2021)

<https://grist.org/equity/democrats-congress-environmental-justice-tammy-duckworth/> (Grist)
<https://naturalresources.house.gov/imo/media/doc/Environmental%20Justice%20for%20All%20Act%202021.pdf> (Environmental Justice for All Act)

[**Note:** Older article. Not exactly "poised" but the bill is out there and the EJ principles are already being inserted in other energy, environmental and budget bills and agency actions.]

General Iron owner sues city for \$100 million — again — over delayed permit (this time in State court) (Chicago SunTimes) (July 8)

<https://chicago.suntimes.com/2021/7/8/22569293/general-iron-lawsuit-southside-recycling-southeast-side-environment-metal-shredder>

[**Note:** The owner of a controversial car-shredding operation has filed another complaint against the city of Chicago — this time in state court — after a federal judge tossed out a similar lawsuit last month. The latest lawsuit seeks to force the city to issue a final permit for a new, renamed scrap-metal operation in Southeast Chicago. Mayor Lori Lightfoot announced in May that she would hold off on issuing the permit until an environmental assessment could be completed. That decision came right after a request from President Joe Biden’s EPA Michael Regan.]

Environmental Justice ‘Finding Voice,’ if Not Votes, in States (Bloomberg E&E (June 23)

<https://news.bloomberglaw.com/environment-and-energy/environmental-justice-finding-voice-if-not-votes-in-states> (Bloomberg)

<https://arkvalleyvoice.com/colorado-climate-bill-signed-protecting-environment-focused-on-disproportionately-impacted-communities/> (Colorado ArkValley Voice) (July 6)

[**Note:** Three states passed EJ laws this spring. To date 12 states have enacted EJ legislation. California, Minnesota, New York, Connecticut, New Jersey, Virginia, Maryland, Delaware, Colorado, Washington, and Rhode Island. Illinois sought to enhance EJ provisions but ran into other political issues and the clock.]

Environmental Justice Research (Chicago State University Research Reports) (no date)

<https://www.csu.edu/cerc/researchreports/envjustice.htm>

[**Note:** A good list of research documents from EPA and private institutions. Mostly dated now but good background and likely to be reviewed and updated in the future.]

Here’s how Biden is spending his first big environmental justice financial investment (Grist) (June 29)

<https://grist.org/politics/biden-environmental-justice-epa-spending-american-rescue-plan/>

[**Note:** The EPA has detailed how it will spend \$50 million authorized by the American Rescue Plan. The funding is meant to help low-income communities and people of color who are facing the greatest risks from pollution and climate change — with an eye toward preventing adverse public health effects, like the greater susceptibility to COVID-19 suffered by many communities of color. The initiative is expected to help communities curb air and water pollution, while also bankrolling educational programs that promise to mitigate the disparate public health outcomes faced by marginalized communities.]

Federal court overturns Union Hill compressor station permit (Virginia Mercury) (January 2020)

<https://www.virginiamercury.com/2020/01/07/federal-court-overturns-union-hill-compressor-station-permit/>

[**Note:** EJ case from 2020 requiring the Virginia DEQ to evaluate the environmental justice impacts of a minor permit (compressor station) for the Atlantic Coast Pipeline. The important point for me is that the Court relied on existing Virginia law requiring such a review even for sources that were clearly minor and otherwise met all permitting requirements. The federal

judge ruled that VDEQ's review of the source was "arbitrary and capricious." The court condemned the agency and the board for their failure both to consider the use of electric motors rather than gas-fired turbines at the proposed station and to evaluate the environmental justice impacts of the facility. Using motors, station opponents argued, "would eliminate almost all" of the site's air pollution. The VDEQ had argued that requiring an electric motor rather than a gas turbine would be beyond its authority and essentially re-defining the source."]

The EPA Accuses Missouri DNR of violating the Civil Rights Act in issuance of Kinder Morgan Permit

<https://grist.org/accountability/the-epa-just-accused-missouris-environmental-agency-of-violating-the-civil-rights-act/> (Grist)

<https://news.stlpublicradio.org/health-science-environment/2021-04-29/epa-investigation-finds-missouri-out-of-compliance-with-federal-civil-rights-rules> (The Missouri Examiner)

<https://www.examiner.net/story/news/2021/04/29/epa-investigation-finds-missouri-out-compliance-federal-civil-rights-rules/7398862002/> (St. Louis Public Radio)

https://www.epa.gov/sites/default/files/2020-09/documents/epa_oig_20200928-20-e-0333_glance.pdf (EPA "At a Glance" newsletter) (September 28, 2020)

[**Note:** The crucial issue is whether or not Kinder Morgan permits are at risk or whether this is only a procedural issue for MDNR to resolve (in the face of potentially losing federal funding). There is no federal EJ law and no Missouri legal EJ requirements. MDNR has taken the position that the permit was properly issued according to Missouri legal and regulatory requirements and that the Agency followed existing protocols including notice and comment.

The MDNR further argues that it has complied with the federal requirements in place when accepting federal monies. However, the EPA's Office of Inspector General last year found that most states don't have the "required foundational elements on their websites" for Title VI. States also reported needing help in knowing how to address discrimination complaints. Three states said they had never received training from the EPA's external civil rights office on how to address Title VI complaints.

This case stems from a Title VI complaint filed by the Great Rivers Environmental Law Center after the state agency issued an extension of an operating permit for a fuel transport site run by the energy infrastructure company Kinder Morgan. Environmental and civil rights groups argued that MDNR's permit didn't take into account how emissions from the facility would disproportionately expose low-income communities of color in St. Louis to high levels of air pollution. The EPA preliminarily has ruled that MDNR is in violation of Title VI under the 1964 Civil Rights Act. Federal investigators found that the state agency failed to comply with several nondiscrimination requirements, such as ensuring that everyone — including those who aren't proficient in English — can participate in public comment periods, not having a staff person for handling Title VI complaints, and lacking an official notice of nondiscrimination.

According to the article, officials will next evaluate the Kinder Morgan site specifically, ruling on whether the DNR's permit was discriminatory. While the investigation continues, the Missouri DNR must follow a number of steps from the EPA to address the violations. The state agency has until May 19 to comply before the EPA will send a final letter of noncompliance. If the DNR still doesn't comply within 24 days after the final letter, an administrative process could be initiated to terminate continued financial assistance to MDNR. The letter marks one of just a few times in the EPA's 50-year history that the agency has made a finding of noncompliance in a Title VI complaint. The decision in Missouri, along with the EPA's recent comments voicing

civil rights concern over a metal scrapyards in Chicago, are indicative of the shift under the Biden administration toward prioritizing environmental justice.]

Strengthening Environmental Justice Through Criminal Enforcement (new EPA Enforcement Guidance)

https://www.epa.gov/sites/production/files/2021-06/documents/strengthening_ej_through_criminal_062121.pdf

[**Note:** Lest anyone had any doubts about the enforcement direction of EPA, here is a recent memo from the Acting Assistant Administrator for OECA (Lawrence Starfield) that sets out steps to "advance these environmental justice (EJ) goals via the criminal enforcement work performed by the Office of Enforcement and Compliance Assurance's (OECA's) Office of Criminal Enforcement, Forensics and Training (OCEFT) and the Regional Criminal Enforcement Counsels (RCECs), with technical assistance from their colleagues in other EPA offices."]

Implementing Biden's Justice40 Commitment to Combat Environmental Racism (Center for American Progress) (June 22)

<https://www.americanprogress.org/issues/green/reports/2021/06/22/500618/implementing-bidens-justice40-commitment-combat-environmental-racism/>

[**Note:** This article is NOT an easy read (lots of lists), but it IS a primer as to what the federal government can do for disadvantaged communities under existing programs and funding.]

The recommendations below come from this Justice40 article:

Recommended Factors for Disadvantaged Communities (White House Environmental Justice Advisory Council (WHEJAC))

<https://www.epa.gov/sites/production/files/2021-05/documents/whiteh2.pdf>

[**Note:** WHEJAC is one of President Biden's signature initiatives and includes 26 of the nation's top environmental justice leaders and scholars.

WHEJAC's recommended factors for defining disadvantaged communities

1. Is majority minority
2. Has high rates of health disparities
3. Demonstrates nonattainment of clean air and water standards
4. Was formerly redlined (meaning it was unfairly denied access to financial and other services, including home mortgages, due to the race or ethnicity of its residents)
5. Experiences food insecurity and low child nutrition levels
6. Is home to children who receive a school lunch program
7. Has a majority of low-income residents and a high percentage of households receiving supplementary income benefits
8. Has high numbers of Superfund and waste sites, landfills, and toxic facilities
9. Has low educational attainment and low high school graduation rates
10. Has high maternal and infant mortality rates
11. Has high asthma rates and deaths
12. Has a poorly maintained stock of housing
13. Has a lack of grocery stores and a proliferation of cent stores and fast-food outlets]

State Regulators Urge EPA To Ramp Up Regulation, Research on Air Toxics (National Association of Clean Air Agencies) (NACAA letter to EPA) (May 25)

<http://www.4cleanair.org/sites/default/files/Documents/NACAAToxicsTransitionIssues-05252021.pdf>

[**Note:** The NACAA representing 41 states' air regulators, is pressing EPA to ramp up its regulation of and research into air toxics as concerns grow about certain high-profile pollutants such as ethylene oxide (EtO), PFAS, diesel exhaust and others that threaten minority communities. In a May 25 letter to EPA, NACAA asks for increased effort to reduce emissions of several key HAPs and also for the agency to regulate previously unregulated industry sectors, as well as specific toxics, such as PFAS and n-propyl bromide (n-PB).]

Environmental Justice and Why You Should Care (The National Law Review) (May 18)

<https://www.natlawreview.com/article/environmental-justice-and-why-you-should-care>

[**Note:** Nice summary of actions taken by the Biden Administration and likely impacts. President Clinton issued an Executive Order on the subject in the mid-1990s, but until recently that concept has rarely been translated into any real-world impact. Recent developments, including developments in St. Louis at Kinder Morgan, a decision by the Fourth Circuit, and action taken by the City of Chicago in response to a request from the EPA, suggest that Environmental Justice will in fact be a central focus for environmental engagement going forward.]

Chicago urged by EPA to Suspend Review of a Local Permit over Environmental Justice Concerns in Southeast Chicago (several sources)

<https://wgntv.com/news/chicago-news/chicago-urged-by-epa-to-vet-developers-behind-delayed-southeast-side-metal-shredder/> (WGN-TV)(May 10)

<https://sidleyenergyblog.sidley.com/city-of-chicago-complies-with-epa-request-to-suspend-permit-review/> (Sidley legal blog)(May 12)

<https://sidleyenergyblog.sidley.com/white-house-environmental-justice-advisory-council-holds-first-meeting/> (First White House EJ Advisory Council Meeting (Notes from Sidley)(April 6)

[**Note:** In a rare move, EPA has asked Chicago officials to suspend review of a permit application to expand a metal recycling plant on the city's Southeast side and conduct a cumulative impact analysis to assess its effects on nearby residents. Chicago Mayor Lori Lightfoot has agreed and says she is now hitting the brakes on the permit application for a well-known metal scrapper.

Chicago health leaders have urged city officials to scrap the South Side recycling plant. US EPA asked the City to complete an environmental justice analysis to meaningfully consider the aggregate potential health effects of the proposed facility. This would include consideration of not only ambient air quality data from Chicago's southeast side but compared to other parts of the city as well as potential impacts from other pathways of exposure.]

Environmental Justice -- Presentations

Environmental Justice Seminar (Chemical Industry Council of Illinois) (May 20)

A. Environmental Justice Overview - Anne Kolton, Vice President, ACC Sustainability and Market Outreach and Communications

B. New Jersey's Environmental Justice Experience - Dennis Hart, Executive Director, Chemistry Council of New Jersey

C. American Chemistry Council's Pilot Project in Houston - Anne Kolton

D. USEPA Region 5 Environmental Justice Overview - David Rieser, K&L Gates Environmental

A. **Environmental Justice Overview** - Anne Kolton, ACC

1. Climate Change and EJ go hand in hand in the Biden Administration / Regan EPA.
2. EJ will apply to all media in a "whole government approach." EPA is already following through on this.

3. EJ issues will not go away and should not be ignored. EPA, states and NGOs are moving forward and breaking new ground with or without your input.

4. Air emissions issues and emissions standards will be the low hanging fruit.

5. Enforcement and permitting decisions is where the "rubber hits the road."

6. Three examples right now illustrate how EJ will play out.

a. **Kinder Morgan and EJ civil rights issue in St. Louis**

<https://news.stlpublicradio.org/health-science-environment/2021-04-29/epa-investigation-finds-missouri-out-of-compliance-with-federal-civil-rights-rules> (St. Louis Public Radio)

<https://www.examiner.net/story/news/2021/04/29/epa-investigation-finds-missouri-out-compliance-federal-civil-rights-rules/7398862002/> (The Examiner)

b. **St. Croix refinery shutdown and class action lawsuit**

<https://thehill.com/policy/energy-environment/553611-epa-orders-st-croix-refinery-to-shut-down-for-60-days-due-to> (The Hill)

<https://viconsortium.com/vi-health/virgin-islands-over-200-st-croix-residents-tap-attorney-lee-rohn-in-class-action-lawsuit-against-limetree-bay-two-other-law-firms-file-separate-class-action-complaints>

c. **RMG Metals in South Chicago - USEPA interference and lawsuit by scrap metal company against City of Chicago**

<https://wgntv.com/news/chicago-news/chicago-urged-by-epa-to-vet-developers-behind-delayed-southeast-side-metal-shredder/> (WGN-TV)(May 10)

<https://www.chicagotribune.com/news/environment/ct-scrap-shredder-sues-chicago-pollution-20210518-wcdnqxlrba33b7pfejsm7x2me-story.html>

7. EJ Screening Tool will be "relaunched" in June with enhancements to "cumulative risk" analysis.

EJ Screen - <https://www.epa.gov/ejscreen>

8. Cumulative Risk is NOT well-developed; the process for assessing cumulative risk is not well-established, not good science.

9. The review process for new chemicals will likely be included in EJ actions.

10. Biden's "Investment" in Climate (whatever the final dollar amount is) will be directed 40% to EJ communities.

11. What is Environmental Justice?

a. EJ is not easily pigeon-holed. It covers diversity, race, and economic disparity.

b. EPA EJ Website: <http://www.epa.gov/environmentaljustice/>

“Environmental Justice 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. EPA has this goal for all communities and persons across this Nation. It 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.”]

c. EPA Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (June 2016): https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf

U.S. Census block group in which more than 50% of the population meets the definition of a “minority population” pursuant to the U.S. Environmental Protection Agency’s (“EPA”)

d. Environmental Justice and Why You Should Care May 18, 2021. <https://www.natlawreview.com/article/environmental-justice-and-why-you-should-care>

B. **New Jersey's EJ Experience** - Dennis Hart, Chemistry Council of New Jersey

1. New Jersey law:

The law directs the NJDEP to publish a list of **overburdened communities** and provide notice to the 331 municipalities in which overburdened communities are located. A community is overburdened if:

* at least 35 percent of the households qualify as low-income households (at or below twice the poverty threshold;

* at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or

* at least 40 percent of the households have limited English proficiency

2. Community Advisory Programs and other efforts to engage your local community must be revived. Many have either fallen by the wayside or become less relevant.

3. The 9/11 terrorist attack on the World Trade towers dramatically impacted the use and viability of CAPS. Access became more restricted and community engagement/visits less frequent.

4. Transparency is a good thing. NGO groups are not fans of science or transparency. They prefer hyperbole.

5. EJ Communities and local leaders are different from the so-called Environmental Activist organizations. The two groups do not always see eye-to-eye. NGO groups and legal centers are actively approaching communities to represent them and take over the issue.

C. **American Chemistry Council's Pilot Project in Houston** - Anne Kolton, ACC

1. Chemical facility accidents in Texas negatively impacted public opinion. The American Chemistry Council has invested in efforts to foster a cultural change with increased transparency, additional monitoring, and efforts to build trust. Speaker noted that you cannot control the CAPs or they will be seen as tools of the facility. It has to be a genuine effort. You should however put limits on what you will help fund. She gave an example of an effort to use ACC grant money to provide teachers and others in the community with handheld monitors as an "early alarm system" even though these handheld monitors are notoriously unreliable and most users untrained.

Instead, the grant money went for a semi-mobile stationary monitor with the support and help of the County Commission.

2. The ACC speaker repeated the comment that EJ is going to happen with or without industry involvement. It's better to be engaged and try to find compromise and areas that make sense.

3. IF you are going to engage the community, get real community leaders and partners. Not folks who are outsiders or those simply hoping to make a political issue out of a problem.

4. If you engage elected leaders, let them take the credit for change. No one wants to hear the facility boast about its effort.

5. Litigation is a real fear and driver for implementing CAPs. Litigation efforts will increase either way but it's better to stay engaged and helpful.

D. USEPA Region 5 Environmental Justice Overview - David Rieser, K&L Gates

1. Region 5 is ground zero for Environmental Justice

2. Speaker addressed Chicago's economic change. The north side is becoming gentrified. It was as industrial as the southeast side in the past but is becoming residential and light commercial.

3. People lived near where they worked in the past. Not every decision was race-based. Industrial operations began along Lake Michigan 150 years ago.

4. Higher income residents and gentrification along the north side is a relatively new phenomenon. The same has not happened in Southeast Chicago.

5. African Americans were steered to industrial areas and kept there during migrations after WWI and WWII but that's also where the jobs were.

6. When the jobs left, many poor (and mostly black) were stuck there. Decisions were race-based. Highways cut through old neighborhoods. Housing discrimination maintained it. Good jobs became scarce. Areas became increasingly disadvantaged.

7. Local EJ community groups are increasingly powerful and have political support.

8. Speaker addressed Flint, noting that the Administrator of Region 5 lost her job over Flint even though she was thoroughly pro-environment. Point: EPA staff do not want to lose their jobs.

9. Enforcement will increase as a result of EJ activities. They go hand in hand. .

10. Permitting complications will arise and become more difficult.

11. Deals will be made that are outside the permit itself.

12. General Iron (RMG) background. [See articles above]. Long-time family business. Last industry standing in North Chicago. Neighborhood changed (gentrification). Facility not wanted. Cut a deal with the city to move south. IEPA said it would issue the permit.

13. RMG agreed to meet new more stringent limits. A court denied NGO's preliminary injunction (no likelihood of success and did not show racial discrimination).

14. EPA stepped in and "encouraged" the city to address EJ issues and use the federal EJ tools to evaluate. The USEA did NOT demand but suggested. The USEPA letter gave the city cover.

15. RMG has now sued the city for renegeing on its agreement. RMG seeks damages for lost profits.

16. The Speaker does not believe EPA thinks they have solid legal ground here to be involved with essentially land use decisions and permitting decisions that went through normal processes.

17. Going forward: Community outrage is not a new tool but being applied here aggressively. Your science supporting the permit can be fine and you can still fail to get a permit. Uncertainty as to who is making the decisions and the standards a facility needs to follow.

18. The US EPA is pushing for "community impact studies" and "cumulative impact analysis" with or without a solid legal foundation.

19. Cumulative risk can be (and usually is) largely unrelated to the facility. Emissions from other sources are outside your control and can come from train yards, highways, etc.

20. Air emissions are a key area for EJ since they are discernible, reportable, and impact these EJ communities.

21. NGOs have a green light to push forward.

DOJ Comments at Environmental Symposium (Bracewell LLP)

a. An assistant U.S. Attorney from New York (not speaking for the DOJ) said at a law firm-sponsored seminar that a federal law definition of EJ could be helpful for enforcement in large part because there is "no legal definition for environmental justice in federal law." The attorney also noted that many EJ issues do not stem from violations of any law. These are often more connected to local zoning and economic development rather than lawfully issued permits.

b. According to the US Assistant Attorney, the DOJ cannot bring an EJ action against a company for a pollutant released lawfully under a permit, even if those emissions may cause disproportionate impacts. However, this is not likely to stop the DOJ from looking beyond permitted releases in order to consider cumulative impacts as they make enforcement decisions.

c. It was also noted that non-permitted releases often "escape the attention of the environmental laws." Although the government cannot necessarily bring an action based on non-permitted releases, a facility that has a high level of release in an area may become the focus point.

d. The Assistant US Attorney also noted that supplemental environmental projects (SEPs) are still banned by DOJ - but may once again become a popular settlement tool because a defendant can receive a substantial penalty reduction in exchange for an environmentally beneficial project in the impacted community.

EPA Biweekly Call with EJ Community (USEPA hosted call)

<https://www.epa.gov/environmentaljustice/national-environmental-justice-community-engagement-calls>

There were two distinct parts of this biweekly call. There was the official update by Matthew Tejada, Director of the USEPA EJ Program, and his team; and a second part of the call which was a somewhat bizarre "listening session" with the EJ community. To see the calendar for upcoming calls, register for upcoming calls, and view meeting materials for past calls, please visit: <https://www.epa.gov/environmentaljustice/national-environmental-justice-community-engagement-calls>.

a. EJ Update by Matthew Tejada.

1. EJ activity at the federal level is unprecedented and historic.
2. Expect big rollouts in October and the rest of the fall.
3. Director Regan's first message to EPA employees was about EJ.
4. President Biden issued two Executive Orders.

a. Racial Equity (13985) which among other things asked all Agencies to submit a "barriers to equality" report to the White House. These reports have been rolling into the WH.

b. Climate EO (14008) which pushed the "all of government" directive as well as the Justice40 initiative which requires 40% of all spending on climate issues to be directed toward disadvantaged communities.

c. Nearly all EPA programs are touched by the EJ effort.

d. EPA is NOT in charge of much of the EJ agenda or activity. It's largely coordinated out of the White House Council on Environmental Quality and the OMB.

e. EJ and Civil Rights are being integrated.

f. EPA's Strategy Plan (2022-2026) (not yet released) will focus on:

1. Integrating EJ into all that EPA does

2. support for communities

3. support for local, state and tribal efforts.

4. Civil Rights compliance.

5. EJ activities in the past had a budget of approximately \$10 million. Tejada expects a budget going forward to be closer to **\$1 billion**. Tejada noted that this number will require passage of key legislative provisions and congressional spending authorization].

[**Note:** Tejada sees EJ issues as comprehensive: food, parks, water, access to fishing, bikeways, etc.]

[**Note:** CEQ and OMB will develop a scorecard to measure success of Justice40, equity, etc.]

[**Note:** Tejada, when asked, emphasized that EJ includes poor whites as well].

g. EJ is being considered as a separate Office (like the Office of Air or Office of Water)

h. ARPA (American Recovery Plan) authorized funding for select areas:

1. \$50 million for EJ (diesel reduction, Brownfields, CAA lead, and drinking water)

2. \$50 million for air quality monitoring

b. Listening session with the EJ Community.

1. A tribe in Los Angeles wants the concrete River ways returned to a natural state for ceremonies and fishing.

2. An activist in New York, "Jesse Deer in Water," wants help cleaning up uranium waste from a nuclear facility.

3. An activist working with the Navajo Reservation needs help with abandoned uranium mines. There are 534 of these apparently.

4. An employee of the Minnesota Pollution Control Agency is asking for money and help to go directly to small community groups and not the state or larger environmental groups who are not capable of competing in grant writing.

5. A Los Angeles School District EHS Director needs help with a recycling facility near a minority public school that is apparently badly mismanaged and is exposing children to toxic levels of various contaminants.