

Impact of Environmental Justice on Siting, Permitting, Operations, Citizen Monitoring, Enforcement and Remediation

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Environmental Justice - Outline

- **Where are we right now on this evolving issue?**
- **Recent State and Federal Court decisions?**
- **What does Environmental Justice mean for the regulated community?**
- **What should I be doing right now? What can I do long-term?**

Environmental Justice – Where are we Now?

- For two years now the Biden Administration through Executive Order, advisory groups, budget allocations, and agency action has been steadily "teeing up" the legal and administrative support structure for advancing "Environmental Justice."
- New federal offices and programs have been established. Unprecedented amounts of federal funding has been allocated for an "all of government" approach. A slew of new federal guidance, FAQs, screening tools, definitions, and policies have been issued.
- EPA has made it clear that "just because you have a valid permit does not mean you are in compliance with Environmental Justice."
- EPA will be spending 50% of its enforcement effort in overburdened communities." Inspection decisions are based on the EJScreen. Essentially, if your census tract meets an 80 percentile on any one of numerous parameters outlined in the EJScreen, you would fit into the category for heightened inspections.

Environmental Justice – Where are we Now?

- New Office of Environmental Justice and Civil Rights within EPA.
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Environmental Justice – FAQ Guidance

- The new EPA "**Interim Environmental Justice and Civil Rights FAQs**" (<https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>)
- The FAQs is an interim document that attempts to answer key permitting-related EJ questions. These FAQs build on prior guidance from the External Civil Rights Compliance Office, in which the office expressed its intent to proactively audit relevant compliance programs to ensure compliance with federal civil rights laws.
- Environmental Justice and civil rights compliance are complementary. Integrating environmental justice in decision-making and ensuring compliance with civil rights laws can together address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level, or communities (Q4, p4)

Environmental Justice – FAQ Guidance

- Environmental justice and civil rights analyses undertaken by permitting authorities may overlap substantially (Q4, p5)
- Recipients of federal funding have an independent obligation to comply with civil rights laws (Q5, p6)
- Conducting an EJ analysis will not satisfy Title VI requirements (Q9, p6)
- If a permitting authority determines a permit would have a disparate impact, guidance suggests modifying permit by: modifying permit operating conditions, lessening or eliminate the impacts, **not renew the permit, or deny the permit** (Q13, p14-15)

Environmental Justice – FAQ Guidance

- a. Permitting Mitigation Measures (Q14, p 15-16)
 - a. Continuous Monitoring equipment
 - b. Additional recordkeeping, monitoring, or reporting
 - c. Website with compliance and real time information
 - d. More stringent limits or additional controls.
 - e. Enforceable work practices, operating plans, and/or best practices
 - f. Limits on hours of operations
 - g. Expansion of buffers
 - h. Mobile health monitoring program
 - i. New traffic plan
 - j. Citizen hotline
 - k. Community benefit agreement

Environmental Justice - definitions

- EPA has adopted **final definitions of “cumulative impacts” and “cumulative impact Assessment”** (ORD "Cumulative Impacts Analysis") (September 30) (EPA PPT, November 3)
- https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf
- (new definition) **Cumulative Impacts:** "The totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes."
- [**Additional EPA commentary:** "Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person’s lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community."]

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- (new definition) **Cumulative Impact Assessment**: "is defined as a process of evaluating both quantitative and qualitative data representing cumulative impacts to inform a decision."
- [**Additional EPA commentary**: "Cumulative impact assessment requires a systematic approach to characterize the combined effects from exposures to both chemical and non-chemical stressors over time across the affected population group or community. It evaluates how stressors from the built, natural, and social environments affect groups of people in both positive and negative ways. ... (cont. next slide)

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- [**Additional EPA commentary:** (cont. from previous slide ... The posited elements of a cumulative impact assessment include community role throughout the assessment, such as identifying problems and potential intervention decision points to improve community health and well-being; combined impacts across multiple chemical and non-chemical stressors; multiple sources of stressors from the built, natural, and social environments; multiple exposure pathways across media; community vulnerability, sensitivity, adaptability, and resilience; exposures to stressors in the relevant past and future, especially during vulnerable life stages; distribution of environmental burdens and benefits; individual variability and behaviors; health and well-being benefits/mitigating factors; uncertainty and variability associated with the data and information; and an approach for how to integrate data and information to assess cumulative impacts."]

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