

# Environmental Justice Update / Resources

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

REGFORM Air Seminar (November 10)

## I. Brief Update

1. 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.

2. In short, the stage is set in 2023 for an active, open, national effort to address Environmental Justice. These efforts will have a dramatic impact on virtually every aspect of environmental protection and regulation -- including permitting decisions, public input, siting, project development and compliance/enforcement.

3. EPA has made it clear that "just because you have a valid permit does not mean you are in compliance with Environmental Justice."

4. 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.

5. New Office of Environmental Justice and Civil Rights within EPA.

6. Final definitions of “cumulative impacts” and “cumulative impact Assessment”[https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report\\_FINAL-EPA%20600-R-22-014a.pdf](https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf)

7. 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.

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

## II. EPA Links

**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](https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf)

[**Note:** According to a presentation by EPA's Science Adviser and Assistant Administrator for the Office of Research and Development (Christopher Frey), the EPA will be presenting these definitions to the Science Advisory Board in early November. Here are both the old and new definitions:

(old definition) **Cumulative Impacts:** "Refers to the total burden – positive, neutral, or negative – of health-affecting actions, conditions, or circumstances of an individual or community at a given point in time or over a period of time. The conditions or circumstances involve chemical and non-chemical stressors and their interactions.

**(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." ]

(old definition) **Cumulative Impact Assessment:** "is the process of accounting for cumulative impacts in the context of problem identification and decision-making. It requires consideration and characterization of total exposures to both chemical and non-chemical stressors, as well as the interactions of those stressors, over time across the affected population."

(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. 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." ]

### **USEPA Announces \$53 Million for 132 Community Air Pollution Monitoring Projects Across the Nation** (EPA Press Release) (November 3)

<https://www.epa.gov/arp/selections-arp-enhanced-air-quality-monitoring-competitive-grant>

[**Note:** No Community Air Projects in Missouri (or the Illinois side of the metro area) were included on the list of 132 sites. In fact, the only Region 7 site is tribal land in western Nebraska. The projects are focused on communities that are underserved, historically marginalized, and overburdened by pollution, supporting President Biden's Justice40 Initiative.]

### **Cumulative Impacts Recommendations for ORD Research** (USEPA website) (January 2022)

[https://www.epa.gov/system/files/documents/2022-01/ord-cumulative-impacts-white-paper\\_externalreviewdraft-508-tagged\\_0.pdf](https://www.epa.gov/system/files/documents/2022-01/ord-cumulative-impacts-white-paper_externalreviewdraft-508-tagged_0.pdf)

[**Note:** Here's a companion 40-page document that outlines ORD's assessment of "cumulative impacts." Tough sledding, but it's an important insight into the "all of government" approach that defines the federal government's effort on EJ.]

### **EPA Finalizes Environmental Justice Action Plan for Land Protection and Cleanup Programs** (USEPA website)

<https://www.epa.gov/newsreleases/epa-finalizes-environmental-justice-action-plan-land-protection-and-cleanup-programs>

[**Note:** The EJ Action Plan outlines the "whole-of-government" EPA-wide effort to address the nation's environmental justice in clean-up programs. It impacts Superfund, Brownfields,

Emergency Response, Solid Waste Management, Resource Conservation and Recovery Act Corrective Action, and Underground Storage Tank programs.]

### **EPA's Creation of its Office of Environmental Justice and External Civil Rights**

<https://www.epa.gov/newsreleases/epa-launches-new-national-office-dedicated-advancing-environmental-justice-and-civil>

### **EPA's Office of Land and Emergency Management Finalizes its EJ Action Plan**

[https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan\\_9.2022\\_FINAL-508.pdf](https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan_9.2022_FINAL-508.pdf)

### **EPA Announces Updates to Its EJSCREEN Mapping Tool**

<https://www.epa.gov/newsreleases/epa-launches-updates-environmental-justice-mapping-tool-ejscreen>

### **Environmental Justice (EPA Website)**

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

[Note: 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."

### **Environmental Justice Screening and Mapping Tool (US EPA)**

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

### **National Environmental Justice Advisory Council (NEJAC)**

<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>

### **Power Plants and Neighboring Communities (EPA website)**

<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>

### **Strengthening Environmental Justice Through Criminal Enforcement**

<https://www.epa.gov/sites/production/files/2021-06/documents/strengtheningejthroughcriminal062121.pdf>

### **EPA Legal Tools to Advance Environmental Justice (EPA EJ Legal Tools)**

<https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>

### **Justice40 – White House Path to Achieve Justice40**

<https://www.whitehouse.gov/omb/briefing-room/2021/07/20/the-path-to-achieving-justice40/>

### **Justice 40 at EPA**

<https://www.epa.gov/environmentaljustice/justice40-epa>

### **Under EPA's New "Strategic Plan," Companies Should Ready for Increased Enforcement and Data Collection in Vulnerable Communities** (EPA Strategic Plan - 2022-26)

<https://www.epa.gov/planandbudget/strategicplan>

[**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 Index (ATSDR) (August)**

<https://www.atsdr.cdc.gov/placeandhealth/eji/index.html>

### **EPA Memo "Cumulative Impact"**

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

## **III. New and Blog Articles on EJ**

### **San Joaquin (California) Valley Air Pollution Control District complains to USEPA about lack of guidance on Civil Rights** (San Joaquin Valley District letter) (October 27)

<https://ww2.valleyair.org/news-outreach-and-education/news-room/> (The District)

<https://insideepa.com/daily-news/california-withdraws-sip-after-faulting-epa-over-lack-civil-rights-guide> (Inside EPA) (Subscription service) (November 6)

[**Note:** The Executive Director of the San Joaquin Valley Air Pollution Control District urged in a letter to USEPA Region 9 for EPA to "provide timely guidance to assist the San Joaquin Valley and other regions on evolving Title VI requirements" and provide states with "guidance on how to effectively address this matter in SIPs."]

### **Texas CEQ Announces New Public Involvement Plan** (National Law Review) (October 20)

<https://www.natlawreview.com/article/tceq-announces-new-public-involvement-plan> (National Law Review)

<https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance> (TCEQ link)

[**Note:** Texas environmental regulators are launching a new requirement that permit applicants conduct outreach to environmental justice (EJ) communities about their projects. The new Public Involvement Plan Form is part of TCEQ's continuing efforts to resolve the petition filed by NGOs with EPA in June 2022 under Title VI of the Civil Rights Act and the Clean Air Act alleging that TCEQ is required to conduct an environmental justice analysis and review before issuing air permits. Beginning November 1st, TCEQ will require permit applicants whose

projects impact poor and minority communities to come up with a public involvement plan, and must fill out a public involvement form when applying for air, waste, water quality and water rights permits that have significant public interest and are located in Austin, Dallas, Fort Worth, Houston, San Antonio, West Texas, Texas Panhandle and along the Mexican border.]

### **Minimizing Risks to Permitting and Compliance Associated with Increased Focus on Environmental Justice** (ArentFox Schiff legal blog) (October 28)

<https://www.afslaw.com/perspectives/environmental-law-advisor/minimizing-risks-permitting-and-compliance-associated>

[**Note:** Good perspective and analysis of what is ultimately at this point still a huge uncertainty. Key takeaways:

1. "Without federal statutory reform, permitting- and compliance- focused efforts are likely to remain largely reactive or derivative of a more robust application of federal civil rights laws."
2. Recent EPA, community and judicial activity in Louisiana "are not outliers. Recent guidance issued by EPA EJ personnel confirms its intent to proactively audit relevant compliance programs to ensure compliance with federal civil rights laws."]

### **New DOJ initiative seeks public input (to address EJ)** (Goshen News) (October 31)

[https://www.goshennews.com/news/new-federal-initiative-seeks-public-input/article\\_c6094e78-54b2-11ed-a429-bb82540d7c2e.html](https://www.goshennews.com/news/new-federal-initiative-seeks-public-input/article_c6094e78-54b2-11ed-a429-bb82540d7c2e.html)

[**Note:** Here is a local news story from Indiana encouraging public input. Expect more of this I think. According to the article, "On Oct. 5, the U.S. Attorney's Office of Northern Indiana announced a new initiative to address environmental justice and public health concerns — and encourages the public to provide input. "Strong and fair enforcement of environmental and public health laws protects our precious natural resources, including Lake Michigan and the Indiana Dunes National Park, and ensures a healthy environment for everyone to live, learn, play and work," U.S. Attorney Clifford D. Johnson said in a news release. "Your reporting of environmental and public health concerns supports environmental protection and environmental justice and helps us protect the community from harmful violations of federal health and safety laws."]

### **EPA's Permitting FAQ Goes Beyond The Letter Of The Law** (Lewis Brisbois legal blog) (October 3)

[https://lewisbrisbois.com/assets/uploads/files/Law360\\_-\\_EPAs\\_Permitting\\_FAQ\\_Goes\\_Beyond\\_The\\_Letter\\_Of\\_The\\_Law.pdf](https://lewisbrisbois.com/assets/uploads/files/Law360_-_EPAs_Permitting_FAQ_Goes_Beyond_The_Letter_Of_The_Law.pdf)

[**Note:** Bold assertions in this legal blog: According to the article: "The EPA admits that the document, by itself, has no legally binding effect. But the question is whether it will have a coercive effect — and if so, to what degree will regulatory authorities feel pressured to adopt the agency's recommendations. This is something to keep an eye on as the guidance is further interpreted and updated." In short, will State regulatory authorities feel pressured to adopt the agency's recommendations? Will they face heightened scrutiny of program areas, risk the loss of funding, or even an EPA denial of issued permits on EJ grounds?]

### **EPA's Environmental Justice Efforts Moving Beyond Regulatory Structures and Into Programming** (National Law Review) (October 6)

[https://www.natlawreview.com/article/epa-s-environmental-justice-efforts-moving-beyond-regulatory-structures-and?utm\\_source=Robly.com&utm\\_medium=email&utm\\_campaign=2022-10-06+NLREnergyEnvironmentalNews&utm\\_content=7595a4b8c9428c41e7a2af5aab35acc6](https://www.natlawreview.com/article/epa-s-environmental-justice-efforts-moving-beyond-regulatory-structures-and?utm_source=Robly.com&utm_medium=email&utm_campaign=2022-10-06+NLREnergyEnvironmentalNews&utm_content=7595a4b8c9428c41e7a2af5aab35acc6)

**EPA Calls Out Environmental Racism in Louisiana’s Cancer Alley** (Government Executive magazine) (October 21)

<https://www.govexec.com/management/2022/10/epa-calls-out-environmental-racism-louisianas-cancer-alley/378669/> (Government Executive)

<https://www.epa.gov/system/files/documents/2022-10/2022%2010%2012%20Final%20Letter%20LDEQ%20LDH%2001R-22-R6%2C%2002R-22-R6%2C%2004R-22-R6.pdf> (EPA October 12 letter)

[**Note:** According to *Government Executive*: "In a 'remarkable' letter, the EPA accused Louisiana regulators of neglecting Black residents’ concerns about toxic air pollution and urged the state to move kids out of a school where monitors found extreme levels of a cancer-causing chemical. The EPA letter urged Louisiana’s environmental and health agencies to analyze cumulative impacts for residents near a synthetic rubber plant owned by Denka Performance Elastomer in St. John the Baptist Parish and a proposed Formosa plastics facility in St. James Parish.]

**Environmental Justice in Focus: Why EPA’s New EJ Office and EJ FAQs Guidance Matter** (Hunton Andrews Kurth legal blog) (October 24)

<https://www.huntonnickelreportblog.com/2022/10/environmental-justice-in-focus-why-epas-new-ej-office-and-ej-faqs-guidance-matter/>

[**Note:** Some may argue that the EJ FAQs document does not represent a shift in agency policy ... but it absolutely has a strong practical effect as EPA prods states and local governments that implement EPA permitting programs to take heed if they want to ensure continued federal funding and avoid challenges to the permits they issue. This blog has some excellent detail on the following topics discussed in the recently issued **EJ FAQs GUIDANCE**:

- \* Emphasizes that complying with environmental laws does not guarantee compliance with civil rights laws
- \* Recommends state-level screening for EJ/civil rights concerns
- \* Endorses consideration of cumulative impacts
- \* Notes potential for permit denial: FAQ #13 and FAQ #14
- \* Provides examples of measures to mitigate adverse and disproportionate impacts
- \* Information on community engagement and available resources

**EPA Announces Second Update to EJSCREEN: EJSCREEN 2.1** (Sidley legal blog and EPA Mapping Tool) (October 11)

<https://www.epa.gov/newsreleases/epa-launches-updates-environmental-justice-mapping-tool-ejscreen> (EPA Website)

<https://sidleyenergyblog.sidley.com/2022/10/14/epa-announces-second-update-to-ejscreen-ejscreen-2-1/> (Sidley law energy blog)

[**Note:** According to the Sidley blog, EPA’s EJSCREEN 2.1 is “more transparent and predictable.” Among other additions:

1. EPA is integrating more recent demographic data from the 2016–20 American Community Survey.

2. The update has a mapping function that will allow users to review multiple EJ indices simultaneously, which EPA reports will offer “a cumulative” view of burdens on EJ communities.]

**Environmental Injustice: Cumulative Impacts in Kansas City** (Natural Resources Defense Council website [and] Clean Air Now blog) (September 21)

<https://www.nrdc.org/experts/veena-singla/environmental-injustice-cumulative-impacts-kansas-city> (NRDC)

<http://0gz.56d.myftpupload.com/blog/> (Clean Air Now)

[**Note:** The "Clean Air Now" is an environmental justice organization in Kansas City that "works to bring systemic change in industry and government policies and practices to protect health and to advance justice." The NRDC recently highlighted the group's effort in Kansas City. In short, the blog says that while EPA is responsible for setting environmental regulations to limit the amount of pollution industrial facilities release -- "this approach has been ineffective in controlling exposures because EPA does not take into account the cumulative impacts or toxic air contaminants." (emphasis added). The blog in particular calls out Certaineed and Owens Corning.]

**Polluted Communities Need Bigger Role in Settlements, EPA Says** (Bloomberg Law) (September 29)

<https://news.bloomberglaw.com/environment-and-energy/polluted-communities-need-bigger-role-in-settlements-epa-says>

[**Note:** Speaking at an Environmental Law Institute briefing, Carol Holmes, senior counsel at EPA's civil enforcement office, said the agency is now urging defendants to “reach out to communities, if they are interested in doing a SEP, to see what types of projects the community thinks would benefit.” The EPA is especially encouraging defendants to consider SEPs when “the content can benefit disadvantaged communities.”]

**Five Things to Know About the New Federal Environmental Justice Index and Cumulative Impacts** (Vinson & Elkins legal blog) (September 1)

<https://www.velaw.com/insights/five-things-to-know-about-the-new-federal-environmental-justice-index-and-cumulative-impacts/>

[**Note:** This is a pretty concise and useful analysis of the EJ Index and relationship to "cumulative impacts." I would summarize it here but the attorneys did that in the blog.]

**EPA Addresses Environmental Justice and Civil Rights in Permitting** (King & Spalding legal blog) (September 22)

<https://www.kslaw.com/news-and-insights/epa-addresses-environmental-justice-and-civil-rights-in-permitting> (King & Spalding blog)

<https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>

(EPA: "EJ and Civil Rights in Permitting FAQs")

[**Note:** Important confirmation of what we heard at the MECC event -- that the biggest takeaway from the recent FAQ guidance document is that a project could pass environmental review, but a permitting agency still could deny a permit on civil rights grounds -- even if a permitting policy, process, or decision is NOT intentionally discriminatory. Moreover, even if there is a substantial

legitimate justification, the FAQ says Title VI requires the permitting agency to determine if there are “comparably effective alternative practices” with less discriminatory effect. That, in turn, requires consideration of mitigation measures to address the adverse impact, and EPA includes “not renewing the permit” as one possible alternative.]

**EPA Administrator Regan announces new environmental justice office** (The Herald Sun, New York Times, Seattle Times) (September 24)

<https://www.heraldsun.com/news/politics-government/article266257236.html> (Herald Sun)

<https://www.nytimes.com/2022/09/24/climate/environmental-justice-epa.html?smid=nytcore-ios-share&referringSource=articleShare> (New York Times)

[https://www.seattletimes.com/nation-world/epa-will-make-racial-equality-a-bigger-factor-in-environmental-rules/?utm\\_source=RSS&utm\\_medium=Referral&utm\\_campaign=RSS\\_seattle-news](https://www.seattletimes.com/nation-world/epa-will-make-racial-equality-a-bigger-factor-in-environmental-rules/?utm_source=RSS&utm_medium=Referral&utm_campaign=RSS_seattle-news) (Seattle Times)

[**Note:** Administrator Regan said he intended to ensure that all new air, water and chemical safety regulations would now have provisions that mitigate the impact of environmental damage to poor and minority communities. That could include stricter pollution controls. The other thing to note is that once a new Office is created, it is difficult to back off down the road. Finally, the Office will have 200 staff and immediately will have \$3 billion from the IRA to use for community block grant projects.]

**Cori Bush on Her Green New Deals for Cities** (The Nation) (September 23)

<https://www.thenation.com/article/politics/cori-bush-st-louis-gnd/> (The Nation)

<https://www.congress.gov/bill/117th-congress/house-bill/2644> (HR2644)

[**Note:** Cosponsored by Democratic Representative Alexandria Ocasio-Cortez, HR 2644 would distribute \$1 trillion directly to cities, towns, and Native American tribes over a period of four years, bypassing conservative state legislatures to empower local governments. According to Bush, “our walls are full of lead paint. Black children are hospitalized with asthma with 10 times the frequency as white children. ... It’s time for people to put pressure on our politicians,” Bush told The Nation. “The voters, the people, and the local governments need to know that this funding can be available.”]

**Court Finds that Addressing Cumulative Impacts of Air Toxics Required for Air Permitting in Louisiana (under Public Trust Doctrine)** (Kean & Miller, Louisiana Law blog) (September 21)

<https://www.louisianalawblog.com/environmental-litigation-and-regulation/court-finds-that-addressing-cumulative-impacts-of-air-toxics-required-for-air-permitting-in-louisiana/#page=1>

[**Note:** According to the blog, the 19th Judicial District Court in Baton Rouge, Louisiana issued a decision on September 14, 2022, vacating a proposed industrial facility’s permit issued by the Louisiana Department of Environmental Quality (“LDEQ”) and finding that LDEQ violated the federal Clean Air Act and its duty under the **Public Trust Doctrine**. Although the decision concerns permitting for a specific facility in St. James Parish, FG LA’s planned ethylene and propylene complex, the decision has far-reaching effects for air permitting in Louisiana under the Prevention of Significant Deterioration (“PSD”) program. In the nearly 40-page decision, the Court holds on several issues including disapproval of the use of Significant Impact Levels (“SIL”) in the PSD analysis, requirements for Environmental Justice reviews and implementation of the U.S. Environmental Protection Agency’s EJSCREEN tool, review of air modeling conclusions, and analysis under Louisiana’s so-called “IT Factors.” The opinion also states that

the LDEQ failed to perform a cumulative impact analysis for potential air toxics emissions from the planned facility such as ethylene oxide and benzene. The Court notes that environmental justice issues are “at the heart of” this case.]

### **Two proposed chemical plants halted, in win for environmental justice**

**activists** (Washington Post) & (The Guardian) (September 16)

<https://www.washingtonpost.com/climate-solutions/2022/09/16/louisiana-chemical-formosa-environmental-justice/> (Washington Post)

<https://www.theguardian.com/us-news/2022/sep/16/plastics-plant-louisianas-cancer-alley> (The Guardian)

[**Note:** Two petrochemical facilities were denied recently in Louisiana’s “cancer alley.”

Apparently, many companies have flocked to the area to take advantage of inexpensive natural gas. Over 150 oil refineries, plastics plants and chemical facilities. Two projects, Formosa Plastics and South Louisiana Methanol, were shelved by the Louisiana 19th Judicial District Court which reversed the Louisiana DEQ air permits over EJ concerns.]

### **EPA Releases Interim FAQs Addressing How Environmental Justice Issues Could Impact Permitting** (ArentFox Schiff) (September 6)

<https://www.jdsupra.com/legalnews/epa-releases-interim-faqs-addressing-8931572/> (ArentFox Schiff legal blog)

[**Note:** EPA’s External Civil Rights Compliance Office recently issued an Interim Environmental Justice and Civil Rights in Permitting FAQs that provides preliminary, albeit interim, answers to 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.]

### **The Inflation Reduction Act: Investments in Environmental Justice** (Foley Hoag legal blog) (August 18)

<https://www.jdsupra.com/legalnews/the-inflation-reduction-act-investments-1746600/>

[**Note:** The Inflation Reduction Act of 2022 (Act) price tag is about \$369 billion. This article, however, highlights the "small but potentially mighty component of the Act that focuses on strengthening environmental justice."

1. \$32.5 million to the Chair of the Council on Environmental Quality to support the collection and tracking of data relating to disparate impacts of environmental pollution and climate burdens.
2. \$53 million to the Administrator of EPA for air quality monitoring conducted by the EPA in low-income and disadvantaged communities and at schools in these communities.
3. \$3 billion to the Administrator of the EPA to establish and manage the Environmental and Climate Justice Block Grants program which will provide grants to community led-projects that seek to reduce air pollution, mitigate health risks from extreme heat disadvantaged areas and increase community engagement in Federal programs.
4. \$15 billion to the Administrator of the EPA for grants to projects that will reduce emissions, like residential rooftop and community solar, in low-income and disadvantaged communities.
5. 10 billion to the Administrator of the Federal Highway Administration to establish and manage Neighborhood Access and Equity Grants to provide grants to various projects including

those that seek to reduce pollution and improve air quality in disadvantaged and underserved communities near major transportation corridors.

6. \$60 million to the Administrator of the EPA for grants to projects that will reduce emissions from vehicles servicing goods movement facilities in low-income and disadvantaged communities with negative health impacts because of the toxic emissions.

7. \$550 million to the Secretary of the Interior for financial assistance including grants for projects that will improve access to drinking water in disadvantaged communities.

8. \$750 million to the Administrator of the EPA for grants to projects that will reduce emissions and improve air quality at ports located in overburdened communities. While there are several provisions focused on environmental justice, the Act leans heavily on federal grant programs to provide opportunities for creative and novel.]

**EPA rolls out new EJ legal toolkit** (E&E News) (May 26)

<https://www.eenews.net/articles/epa-rolls-out-new-ej-legal-toolkit/>

**EPA Contemplates Cumulative Impact Guidance for Civil Rights** (Bloomberg) (August 11)

<https://news.bloomberglaw.com/environment-and-energy/epa-contemplating-cumulative-impact-guidance-for-civil-rights>

**Five Things to Know About the New Federal Environmental Justice Index and Cumulative Impacts** (Vinson & Elkins) (September 1)

<https://www.velaw.com/insights/five-things-to-know-about-the-new-federal-environmental-justice-index-and-cumulative-impacts/>

**Scientists Struggle with how to use "cumulative risk" to account for risks faced by poor and minority communities** (National Academy of Sciences)

<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>

**Funding from Inflation Reduction Act to improve air quality monitoring across U.S.** (Denver TV7)

<https://www.denver7.com/news/national/funding-from-inflation-reduction-act-to-improve-air-quality-monitoring-across-u-s>

**One Year After Chicago EJ Civil Rights Complaint** (NRDC) (August 20)

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

**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/>

**EPA Investigation Finds Missouri Out Of Compliance With Federal Civil Rights Rules**

<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) (April 29)

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

### **Coalition of Environmental Justice and National Groups Celebrate as Equity Issues Advance**

<https://earthjustice.org/news/press/2021/coalition-of-environmental-justice-and-national-groups-celebrates-equity-advances-calls-on-biden-congress-to> (EarthJustice) (July 14)

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/> (White House briefing) (July 14)

### **General Iron owner sues city for \$100 million — again** (Chicago SunTimes) (July 8)

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

### **Environmental Justice ‘Finding Voice,’ in States**

<https://news.bloomberglaw.com/environment-and-energy/environmental-justice-finding-voice-if-not-votes-in-states> (Bloomberg E&E) (June 23)

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

### **Environmental Justice Research** (Chicago State University Research Reports)

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

### **EPA Accuses Missouri DNR of violating the Civil Rights Act in Kinder Morgan**

<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> (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)

### **Implementing Biden’s Justice40 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/>

### **Environmental Justice and Why You Should Care** (National Law Review)

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