

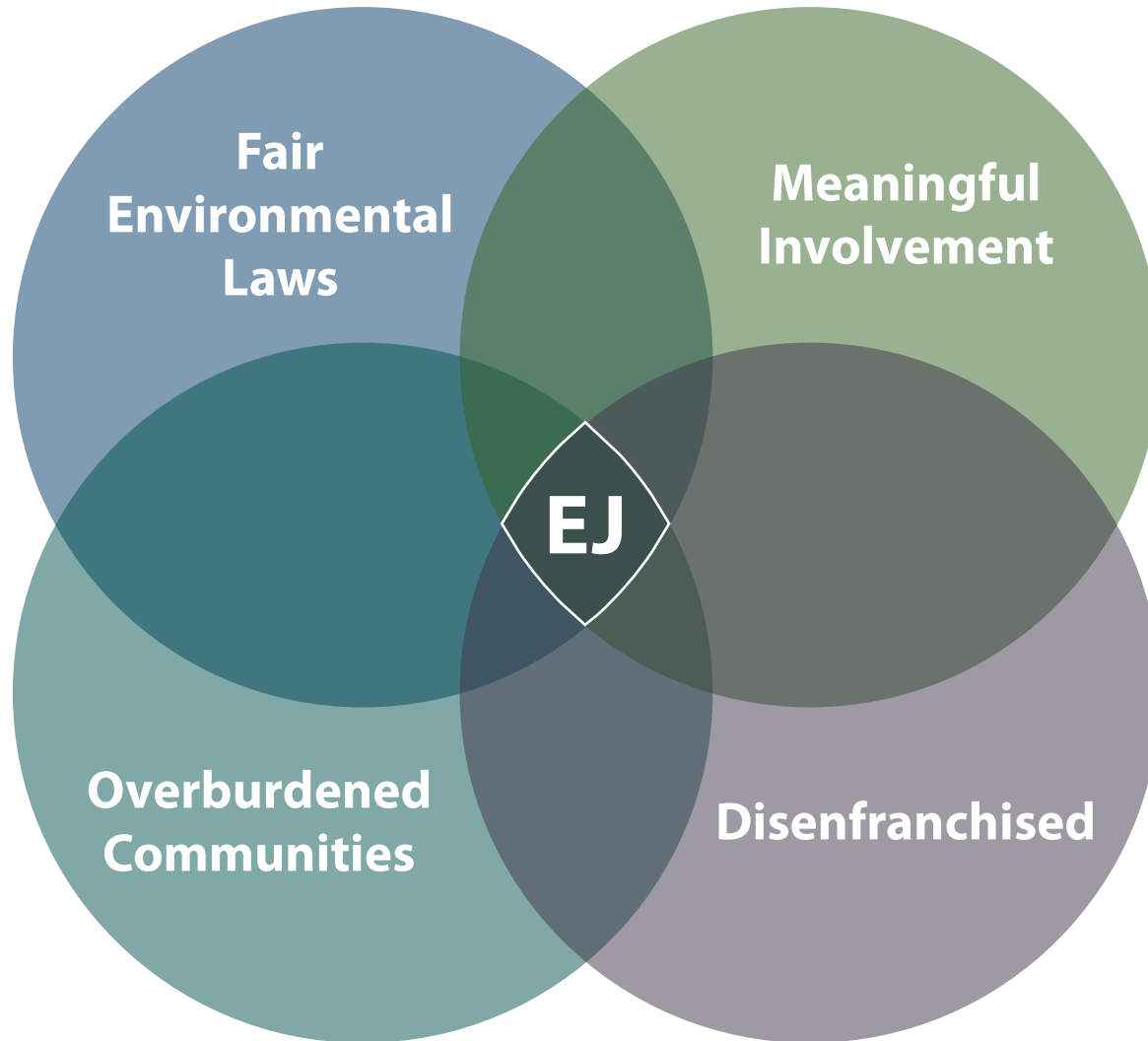
Environmental Justice: New Perils for Permitting, Enforcement, and Application of Cumulative Risk

Ari S. Lewis, M.S.

December 5, 2023

EPA - Full Throttle in 2024

EJ Introduction



"The just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

- (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices."

Funding



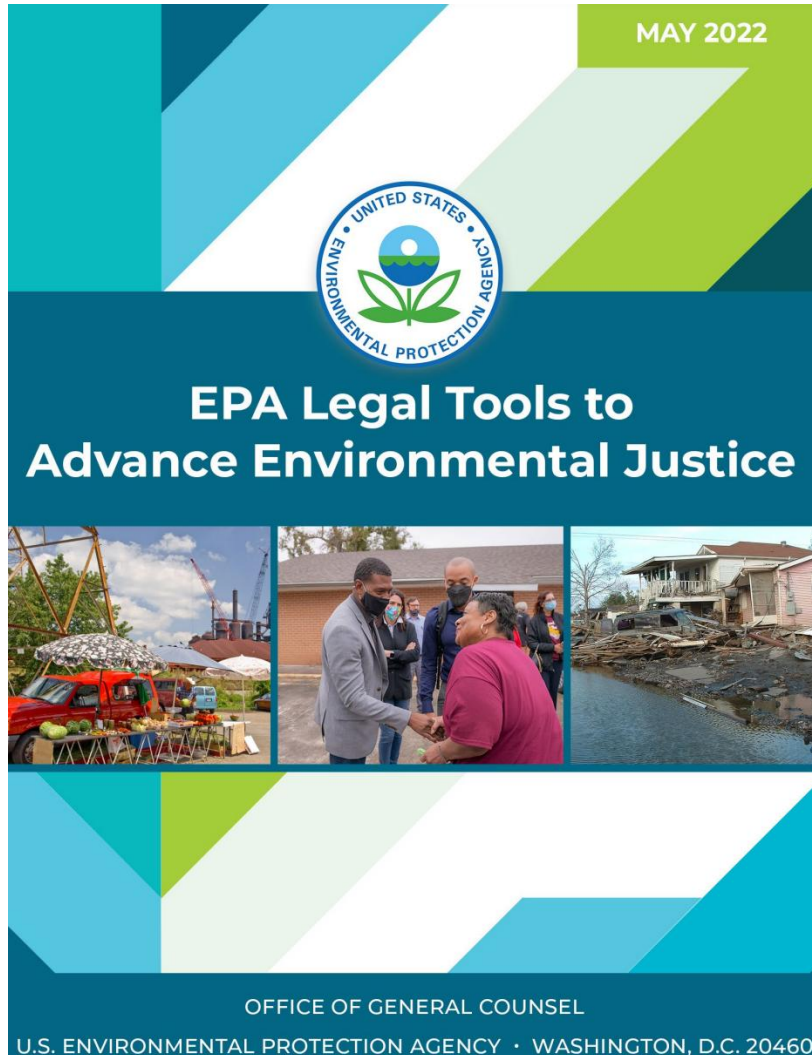
- New opportunities for agencies, interest groups, and communities to:
 - Perform studies
 - Receive education or training
 - Monitor compliance
- US EPA (ECJ and OEJECR)
 - Created by the IRA under the Clean Air Act (~\$3 billion); must be awarded by September 30, 2026
 - Financial and technical assistance for environmental and climate justice activities to benefit EJ communities
 - \$2 billion for Community Change Grants
 - \$550 million for Thriving Communities Grantmaking Program
 - \$177 million to create EJ TCTACs
 - \$70 million for EJG2G
 - \$30 million for EJGPS

Funding: Programs Covered Under Justice40

Agency	Covered Program
US EPA	Direct awards for continuous monitoring of PM _{2.5} and other air pollutants
	Enhanced regional capacity for short-term community monitoring needs
	Grant competition for community monitoring
	Federal support for air quality management (American Indian Air Quality Training Program)
	Compliance monitoring (on-site inspections)
	Environmental Justice Program
	Pollution Prevention Program
	Toxics Release Inventory (TRI)/Community Right-to-Know Program
	Orphaned Well Program
US DOI	Orphaned well site plugging, remediation, and restoration
	Offshore orphaned infrastructure decommissioning
	Environmental Management Program (EMP)
	Energy Community Revitalization Program
	Central Hazardous Materials Fund

Agency	Covered Program
US DOE	Transmission Facilitation Program
	Advanced Energy Security Program
	Energy improvement in rural and remote areas
	Industrial Emissions Demonstration Program
	Community engagement cooperative agreements related to soil and groundwater remediation
	Orphaned well site plugging, remediation, and restoration
	Resource technologies and sustainability
	Indian Energy Policy and Programs
	Legacy management
	Advanced Energy Manufacturing and Recycling Grants
	Energy Efficiency and Conservation Block Grant Program (EECBG)

Rulemaking and Permitting



- **Programs**
 - Clean Air Act
 - Clean Water Act
 - Safe Drinking Water Act
 - RCRA
 - Superfund
 - FIFRA
 - Federal Food, Drug, and Cosmetic Act
 - TSCA
 - NEPA
 - *Etc.,*

CHAPTER ONE: CLEAN AIR ACT PROGRAMS

STANDARD SETTING

- I. NEW SOURCE PERFORMANCE STANDARDS
- II. STANDARDS FOR SOLID WASTE INCINERATORS
- III. HAZARDOUS AIR POLLUTANT STANDARDS
 - A. List of Hazardous Air Pollutants
 - B. MACT Standards
 - C. GACT Standards
 - D. Residual Risk
- IV. NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)
- V. MOBILE SOURCES
 - A. Fuel Controls or Prohibitions
 - B. Motor Vehicles and Nonroad Engines and Vehicles
 - C. Renewable Fuel Standards
- VI. AMBIENT AIR QUALITY MONITORING DATA AND MONITORING NETWORKS
- VII. AIR QUALITY MODELING FOR GENERAL AIR QUALITY ASSESSMENTS, AIR QUALITY DESIGNATIONS, AND CALLS FOR PLAN REVISIONS
- VIII. MODELED ATTAINMENT DEMONSTRATIONS AND UNMONITORED AREA ANALYSES
- IX. NONATTAINMENT AREA CONTROL MEASURE ANALYSES
- X. PLAN REVISIONS
- XI. DISCRETIONARY ATTAINMENT DATE EXTENSIONS
- XII. DISCRETIONARY AND MANDATORY SANCTIONS
- XIII. NEW PLANNING AFTER FAILURE TO ATTAIN A STANDARD
- XIV. AIR QUALITY REDESIGNATIONS
- XV. CONFORMITY OF FEDERAL ACTIVITIES TO THE STATE, TRIBAL, OR FEDERAL IMPLEMENTATION PLAN
- XVI. FEDERAL IMPLEMENTATION PLANS
 - A. Federal Implementation Plans in Areas of State Jurisdiction
 - B. Federal Implementation Plans in Indian Country

Permitting



Environmental Protection Agency

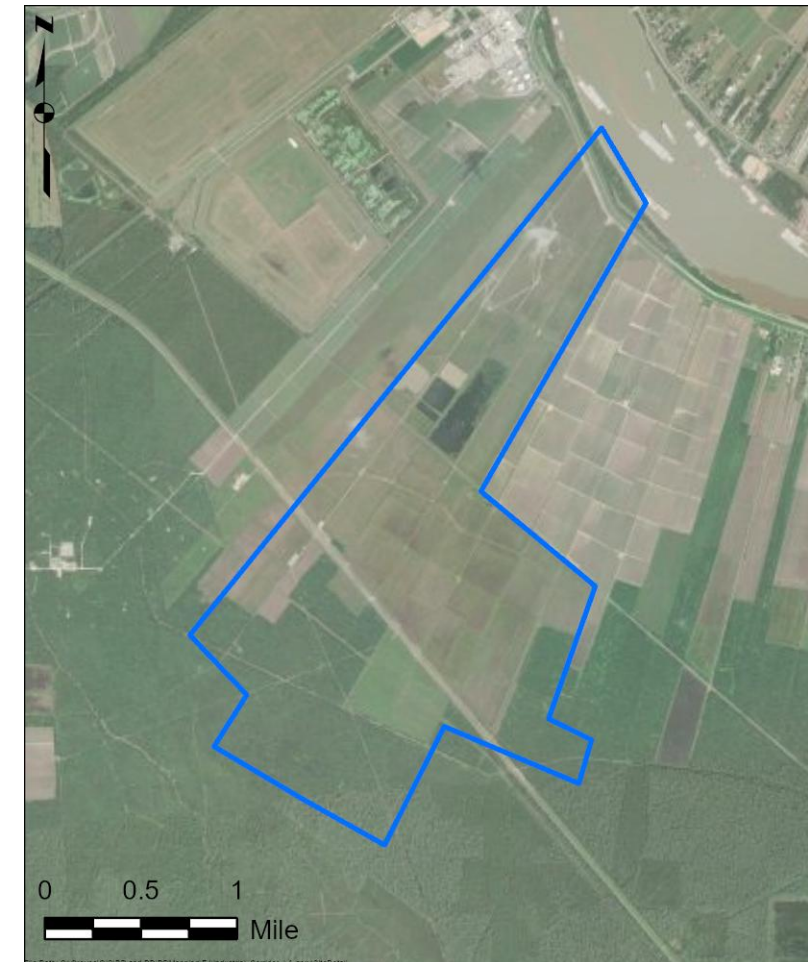
Interim
**Environmental Justice and Civil Rights in
Permitting
Frequently Asked Questions**

- "EPA recognizes that it is time to use the full extent of its enforcement authority under federal civil rights laws, including Title VI of the Civil Rights Act of 1964"
- "If there are no mitigation measures the permitting authority can take, whether within or outside the permitting program, that can address the disparate impacts, and there is no legally sufficient justification for the disparate impacts, denial of the permit may be the only way to avoid a Title VI violation"

Denka Performance Elastomer Plant



Proposed Formosa Plastic Plant



Non-chemical Stressors and Cumulative Risk Assessment

- Large body of research showing disproportionate adverse health outcomes in low-income communities

Socioeconomic



Income, poverty/unemployment rate; racial/ethnic population; English proficiency; education; housing

Susceptibility



Age distribution; genetics

Environmental Burden



Air pollutant data; contaminants in industrial sites; compliance indicators; road traffic; mining; oil and gas extraction; pesticide exposure

Behavioral



Nutrition; obesity; drug/alcohol abuse

Community



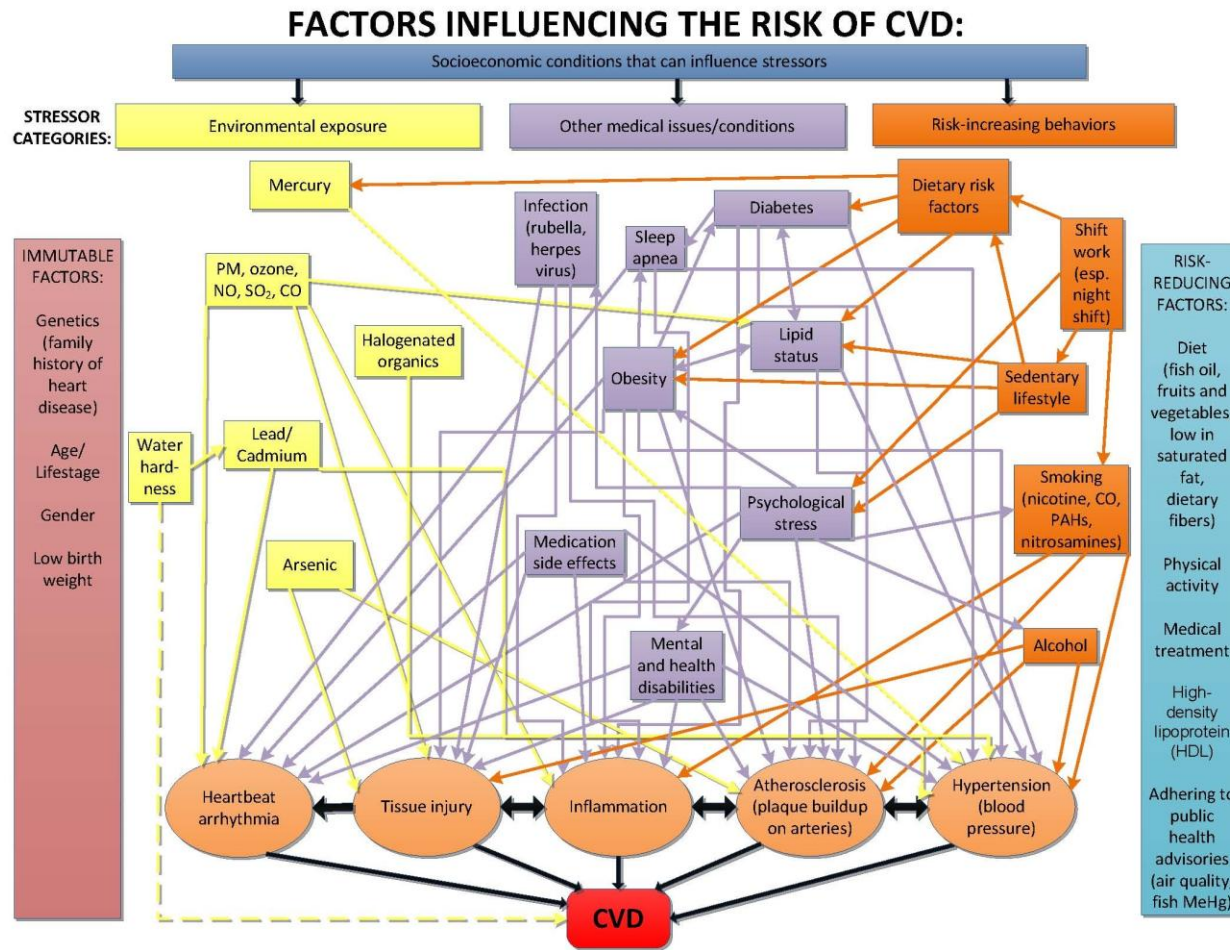
Violence/crime; health care; housing and schools; law enforcement; disenfranchisement

Climate-Related



Tree canopy; flooding risk; ocean acidity

What is Cumulative Risk?



Cumulative Risk:

- “An analysis, characterization, and possible quantification of the combined risks to health or the environment from multiple agents or stressors (US EPA, 2003)”

Source: Framework for Human Health Risk Assessment to Inform Decision Making (US EPA)

Cumulative Risk Guidance and Documents

In principle, not a new idea...

1986: US EPA's "Guidelines for Health Risk Assessment of Chemical Mixtures"

1996: Food Quality Protection Act

1997: US EPA's "Guidance on Cumulative Risk Assessment"

1997: Council on Environmental Quality's "Considering Cumulative Effects Under the National Environment Policy Act"

2000: US EPA's "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures"

2003: US EPA's "Framework for Cumulative Risk Assessment"

2004: NEJAC's "Ensuring Risk Reductions in Communities with Multiple Stressors"

2006: US EPA's "Considerations for Developing Alternative Health Risk Assessment Approaches"

2009: NRC's *Science and Decisions* (Chapter 7)

2013: *Expected US EPA Cumulative Risk Assessment Guidelines*

2014: US EPA's "Framework for Human Health Risk Assessment to Inform Decision Making"

2016: US EPA's "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis"

Cumulative Risk Guidance and Documents

More recently...

2022: US EPA's "TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities"

2022: US EPA's "Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development (Final Report)"

2022: US EPA's "EJ in Air Permitting: Principles for Addressing Environmental Justice Concerns in Air Permitting"

2023: US EPA's "Draft Proposed Principles of Cumulative Risk Assessment Under the Toxic Substances Control Act"

2023: US EPA's "Guidelines for Cumulative Risk Assessment Planning and Problem Formulation (Draft)"

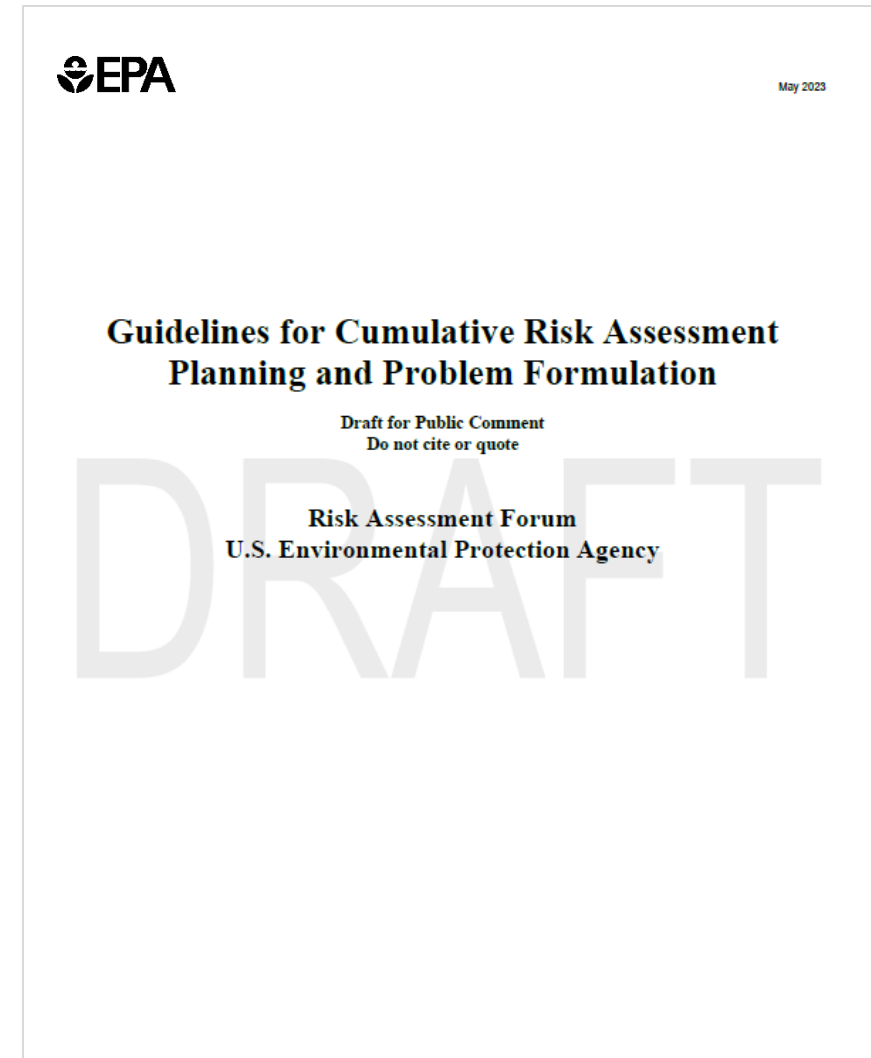
And on the horizon...

2023 (Open for comment): US EPA's "Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)"

2024 (Update): US EPA's "Guidance for Assessing Environmental Justice in Regulatory Analysis (Environmental Justice Technical Guidance or EJTG)"

Guidelines for Cumulative Risk Assessment Planning and Problem Formulation (Draft)

- Some key takeaways:
 - Initiating factors and triggers for incorporating cumulative risk assessment (CRA) into an EJ assessment require further clarification
 - Difference between CRA and cumulative impact assessment (CIA)?
 - Endorsement of non-chemical stressors (as stressors and as effect modifiers), but "fuzzy" guidance on how to quantify relationships
 - Lack of clarity of how results would inform action
 - Harmonization between agencies
 - Lacked any examples that go beyond similar chemical groups with overlapping mode of action

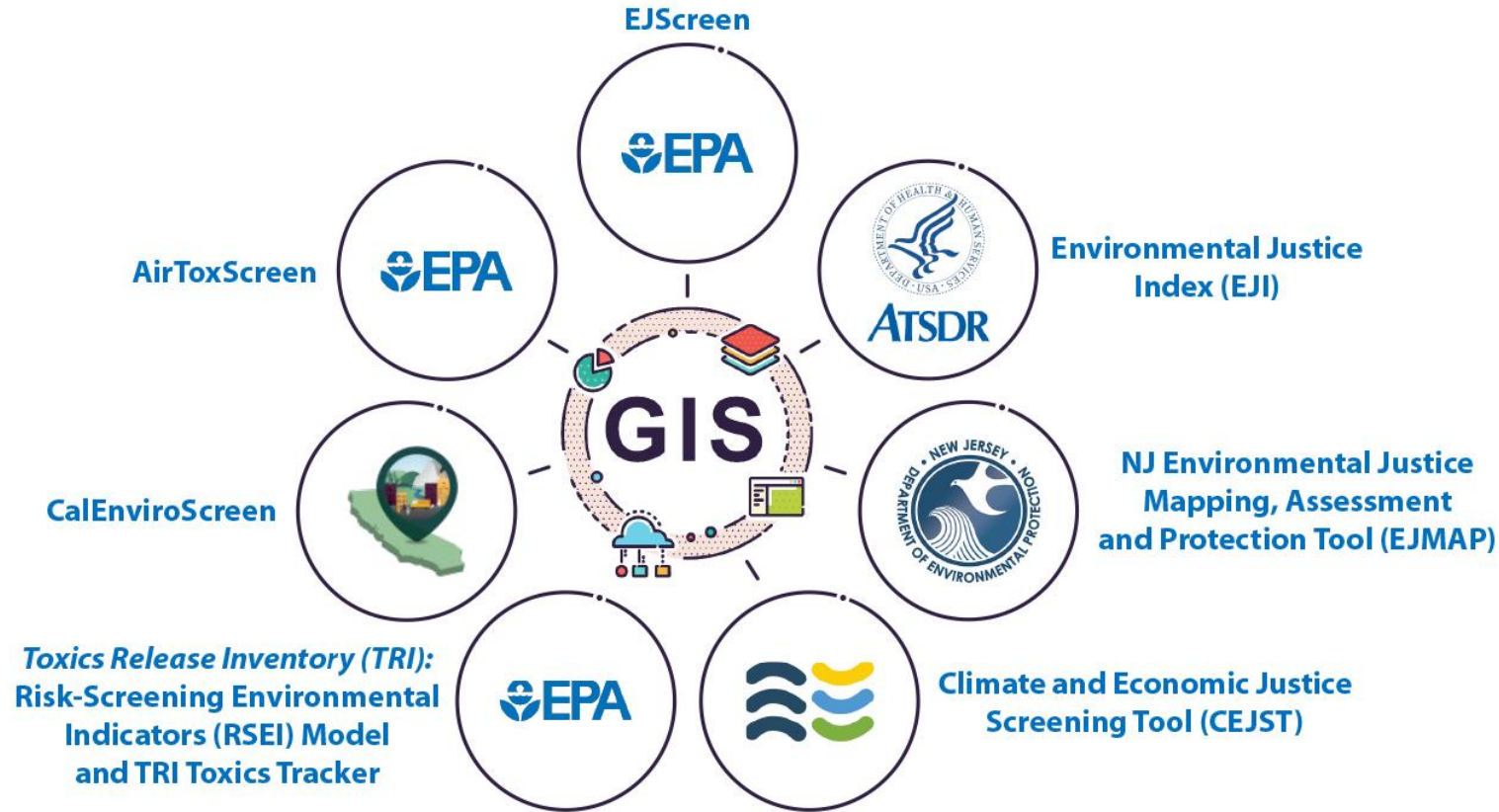


Fenceline Assessment

- Fenceline populations focus US EPA initiatives
 - Under TSCA being addressed statutorily as a potentially exposed or susceptible subpopulation (PESS)
 - Existing draft guidance and application in several priority chemical risk assessments (e.g., 1,4- dioxane, methylene chloride)
 - Air and water pathway – screening assessment



Environmental Justice Tools



Purpose

- Map and identify communities with EJ concerns and quantify impacts (ideally)
- Help prioritize resources (*e.g.*, grants, cleanup efforts, enforcement actions, outreach) and inform policy

Tools Do Not

- Quantify exposure or risks (all relative)
- Assess cumulative impacts
- Mandate regulatory decisions (but stay tuned)

Conclusions

- EJ is a federal and state government priority
 - Increased funding
 - Increased scrutiny, compliance, and enforcement actions
- Rulemaking and permitting issues active areas
- Cumulative risk/impact assessment
 - Complex; mix of qualitative and quantitative information
 - Guidance still evolving
- Several EJ tools accessible to regulators, stakeholders, and the public
 - Takes burden of complex data modeling off of general population
 - Generally, high-level screens, not for risk assessments, but can help inform
 - "Cumulative impact" tools are the goal, but not available yet

Thank You!

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Environmental Justice in 2023

J. Michael Showalter, Partner, ArentFox Schiff





Definitions



REALITY



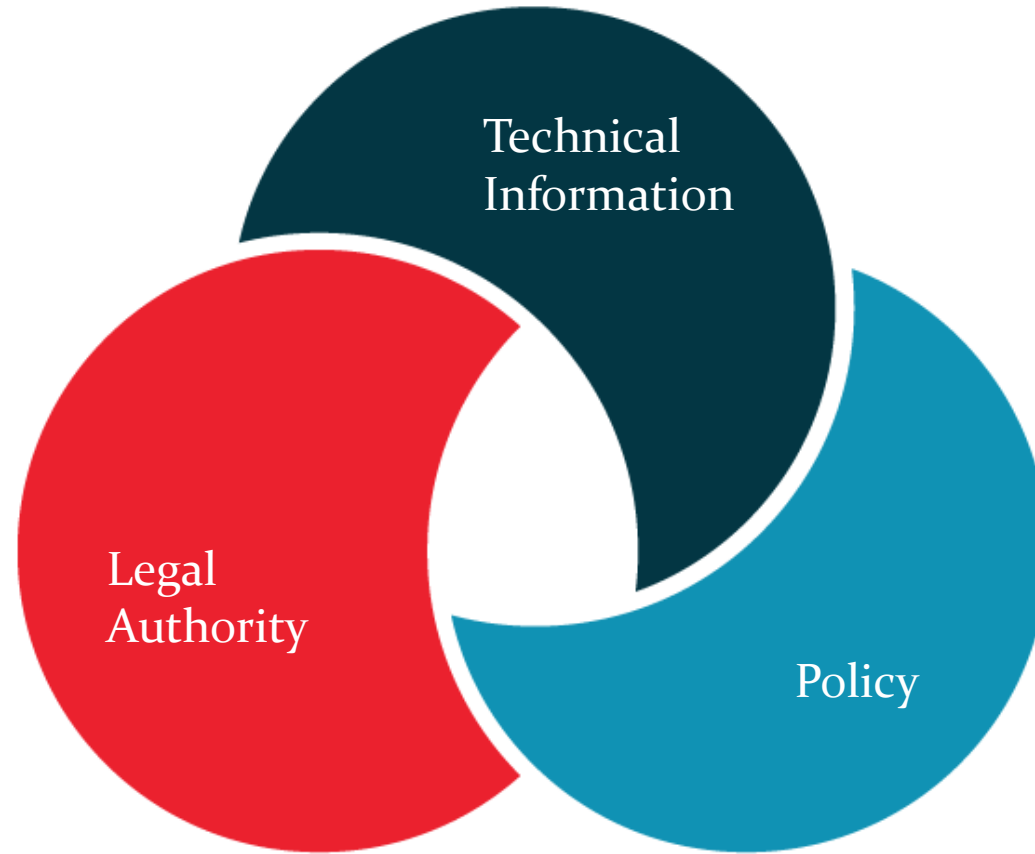
EQUALITY



EQUITY



JUSTICE



Policies Present Tradeoffs

- **Equity** is uncontroversial until
- **Legal authorities** and Congressional sclerosis.
- **Sustainability** is uncontroversial but
 - Controversies over where sustainable aviation fuel.
 - Refineries have to be located somewhere.
 - Corporate need to protect CBI versus community right to know.
 - Old technologies like wind and solar and new technologies like CCS will be locally controversial.
- **Resiliency** issues will not affect communities equally.



ArentFox
Schiff



