



# Environmental Justice Overview: The History of Environmental Justice Movement and the Legal Landscape

May 2024



# Agenda

What is the EJ movement and the legal basis behind it?

How is the Biden Administration directing EJ policy?

Why is it important for companies to consider EJ?

What are the key statutes that can help advance EJ?

Group Exercise

# EJ Background

## What EPA's Definition of Environmental Justice

- “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:
  - 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
  - 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

SOURCE [Environmental Justice | US EPA](#)

Communities of color are particularly vulnerable to the adverse effects of:



Air pollution



Environmental carcinogens



Lead poisoning



Climate change



Water pollution



Flooding



Natural disasters



Drought



Extreme heat and “heat islands”

# EJ Background

## What is California's Definition of Environmental Justice

- **Environmental justice means:**

- The “fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

- **Environmental justice includes, but is not limited to:**

- “The availability of a healthy environment for all people.”
- “The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.”

“Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decisionmaking process.”

“At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.”

Gov. Code § 65040.12(e).



# The EJ Movement: The Early Years

- December 1979: A group of African American homeowners organized as the Northeast Community Action Group (NECAG) and fought to prevent the Whispering Pines Sanitary Landfill from being placed with 1500 feet of a local school.
- The case *Bean v. Southwestern Waste Management, Inc* was the first lawsuit to allege environmental discrimination under civil rights laws.



# The EJ Movement: Gaining National Attention

- September 1982 Sit-in Against Warren County, NC PCB Landfill: a nonviolent sit-in protest against a polychlorinated biphenyl (PCB) landfill.
- At the behest of Congressman Walter Fauntroy, the General Accounting Office in June 1983 confirmed that hazardous waste sites in three southeastern states were [disproportionately located near black communities](#).



# The EJ Movement: Studies Reveal Disparate Treatment

- In 1983, Dr. Robert Bullard conducts the first comprehensive review of environmental racism and found that, despite comprising only 25% of the population, African American neighborhoods in Houston housed all 5 city-owned garbage dumps, 80% of the garbage incinerators and 75% of the privately owned landfills.
- In 1987, the United Church of Christ produced a landmark report by Charles Lee currently of the EPA, showing that three out of five Latino and black Americans [lived near a toxic waste site](#).





# Environmental Justice Formulation

THE EDICTS OF PUBLIC PARTICIPATION

+

NON-DISCRIMINATION BASED ON RACE, COLOR,  
NATIONAL ORIGIN OR LOW INCOME

=

FOUNDATIONAL ELEMENTS OF  
ENVIRONMENTAL JUSTICE





# The EJ Movement: Government Support

- In 1991, First National People of Color Environmental Leadership Summit is held in Washington, DC yields the [17 Principles of Environmental Justice](#)
- In 1992, The EPA Office of Environmental Equity was established (later the Office of Environmental Justice)
- [Executive Order 12898](#): signed by President Bill Clinton in 1994, directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.
  - Presidential Memorandum cites Title VI and NEPA



*How will the Biden Administration  
Influence EJ Policy?*

# EJ Champions to Watch in the Biden Administration and Congress



CEQ Chair  
**Mallory**



Administrator of EPA  
**Regan**



Secretary of DOI  
**Haaland**



U.S. Senator (D-IL)  
**Duckworth**



U.S. Senator (D-NJ)  
**Booker**



U.S. Senator (D-DE)  
**Carper**



U.S. Rep. [D-AZ]  
**Grijalva**



U.S. Rep. (D-CA)  
**Ruiz**



U.S. Rep. [D-MO]  
**Bush**



U.S. Rep. [D-NY]  
**Ocasio-Cortez**

SENATE

HOUSE



# How is the Biden Administration Directing EJ Policy?

## Executive Orders

- [EO 13985](#) – Directs Agencies to assess and advance equity using federal resources
- [EO 13990](#) – Directs CEQ to rescind previous draft NEPA Guidance on GHG and revise NEPA regulations
- [EO 14008](#) – Creates WHEJAC, Justice40, Climate & Economic Justice Screening tool; strengthen enforcement in EJ communities
- [EO 14052](#) - Implemented EJ related provisions of the Bipartisan Infrastructure Law (BIL)
- [EO 14057](#) – Requires agency Sustainability Plans as well as Climate Adaptation and Resilience Plans that consider EJ and Justice40 initiatives
- [EO 14082](#) - Implemented EJ related provision of the Inflation Reduction Act (IRA)
- [EO 14091](#) – Creation of agency Equity Teams, Equity Action Plans, a White House Steering Committee on Equity and increase engagement with underserved communities
- [EO 14096](#) – Requires agency environmental justice strategic plans and assessments, creates a new Federal Chief Environmental Justice Officer and prioritizes scientific data a research around cumulative impacts

## Examples of Agency/Department Actions

- WHEJAC Recommendations
- EPA Administrator Regan EJ Memos and creation of new Office of Environmental Justice and External Civil Rights
- OMB Justice40 Implementation Guidance
- New Office of Environmental Justice at DOJ

# WHEJIC & WHEJAC

## New Government Wide Advisory Councils

- President Biden established the White House Environmental Justice Interagency Council (WHEJIC) to coordinate environmental justice work across agencies
- President Biden also established the White House Environmental Justice Advisory Council (WHEJAC) which is made up of EJ experts who guide the interagency group.
- Both groups report to the chair of the White House Council on Environmental Quality (CEQ), Brenda Mallory, a long-time champion of EJ
- The two councils are responsible for ensuring the all-of-government approach to addressing environmental injustice, strengthening [Executive Order 12898](#), and developing a system for measuring its effectiveness, including a yearly published scorecard.
- The WHEJAC has presented its recommendations on implementing President Biden's Justice40 initiative which aims to give 40 percent of the benefits of federal investments in clean energy to underserved communities as well as on strengthening the 1994 executive order and the design of the climate and economic justice screening tool.

# OMB Justice40 Definition of disadvantaged communities includes 13 criteria:

- Low income, high and/or persistent poverty
- Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
- Linguistic isolation
- High unemployment and underemployment
- High housing cost burden and substandard housing
- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts (EJSCREEN analysis)
- Limited water and sanitation access and affordability
- Disproportionate impacts from climate change
- High energy cost burden and low energy access
- Jobs lost through energy transition
- Access to healthcare

## Key OMB Definitions

**Community** – “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”

**Disadvantaged** – Agencies should consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables

**Covered Program** – a Federal Government program that makes covered investment benefits in one or more of seven areas



# Where EJ Considerations Will be Applied/Prioritized by the EPA

## Science

- Strengthen the scientific foundation for considering environmental justice in decision-making through research on decision support tools, adverse and cumulative impacts and risks, innovative monitoring and solution technologies

## Rulemaking

- Ensure environmental justice is **appropriately analyzed, considered and addressed in EPA rules with potential environmental justice concerns**, to the extent practicable and supported by law.

## Permitting

- Consider environmental justice concerns in all appropriate EPA permitting activities, and collaborate with state, tribal and local co-regulators, communities and permit applicants to identify and share tools, promising practices, and approaches.

## Compliance & Enforcement

- Address pollution and public health burdens caused by violations of environmental laws in the nation's most overburdened communities, strengthen the role of environmental justice in EPA's compliance and enforcement work, and enhance work with regulatory partners in overburdened communities.

# Where EJ Considerations Will be Applied/Prioritized by the EPA

## Federal Agencies

- Strengthen collaboration and coordination on environmental justice issues **among all federal agencies** to amplify collective impact in overburdened communities.

## Tribes and Indigenous People

- Protect the environment and health of federally recognized tribes and indigenous peoples, and provide them access to the Agency's decision-making processes, so that everyone has a safe and healthy environment in which to live, learn, work and play

## State and Local Governments

- Achieve significant environmental results and meaningful public participation in the nation's most overburdened and vulnerable communities **in partnership with state and local co-regulators; and build the joint capacity of EPA, state and local co-regulators** to address environmental justice concerns in day-to-day program work.

## Community Based Work

- Achieve meaningful and sustainable improvements in overburdened areas through the strategic deployment of Agency community-based and core programmatic resources in a cross-agency manner that helps to build the capacity of community partners, and establishes community-based work as a routine means of achieving EPA mission

# EJ Analysis will have to be performed in every industry affecting EJ communities

Natural Gas



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Renewables



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Hydrogen



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Refineries



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Chem Manufacturing



Transportation



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Ports



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**Rulemaking**

**Permitting**

**Enforcement**



## Why is it important for companies to consider EJ?

- Maintains client's status as an industry leader
- Bolsters record of environmental compliance
- Builds relationships with community and customers
- Transparency is favored by regulators (and courts)

EJ provisions impact business operations in terms of policy development, permitting, enforcement and ESG compliance.

Informed companies are better positioned to manage the potential risks:

Legal  
Financial  
Reputational



# Potential EJ Impacts on Business Operations

## Legal Risks



- Citizen Suits
- Lawsuits challenging agency action/inaction
- Constitutional Claims
  - Equal Protection
  - State Constitutional Provisions
- Title VI Claims
- Regulatory Uncertainty

## Financial Risks



- Costs of additional studies on a tighter timeframe
  - “An ounce of prevention is worth a pound of cure”
- Costs of implementing unplanned remedies
- Project delay costs

## Reputational Risks



- Adversely effect company's brand as a good neighbor/environmental steward
- Consumer confidence is diminished
- Shareholder and Board of Director concerns
- ESG



# Gwen Keyes Fleming

Partner

Co-Chair, Environmental Practice Group

Washington, DC & Atlanta, GA

## Contact

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## Education

J.D., Emory University

B.S., Rutgers University

Certificate of Completion for the Promoting Racial Equity in the Workplace Program, John F. Kennedy School of Government at Harvard University, Executive Education

## Admissions

District of Columbia

Georgia

Strength in building relationships, advising on complex legal and regulatory matters, in-depth knowledge of local, state and federal governments, and helping clients achieve their business and operational imperatives are at the heart of Gwen Fleming's practice.

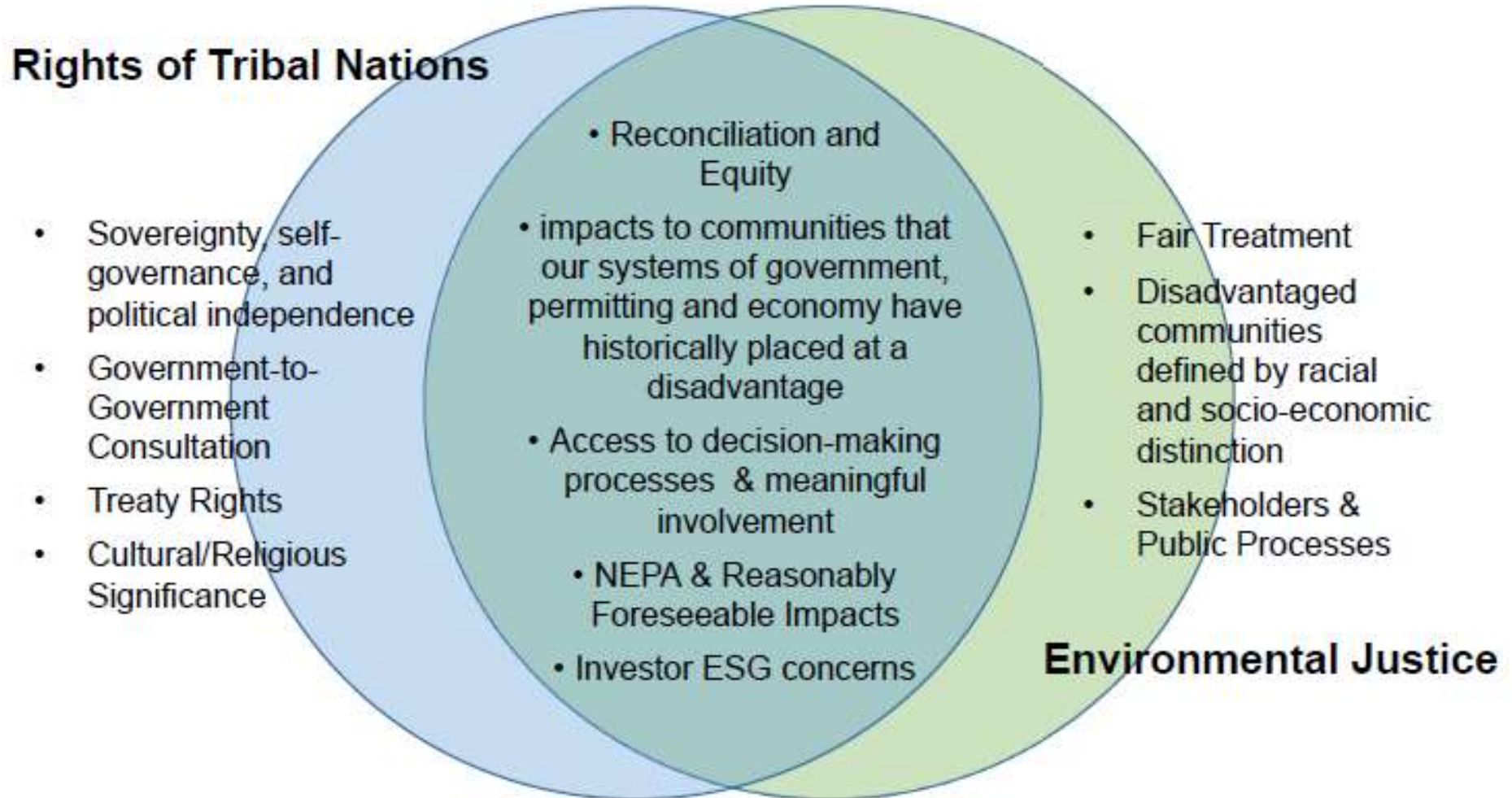
Gwen advises a wide variety of business, institutional and organizational clients on all aspects of environmental policy, government relations, compliance planning, incident response, subsequent enforcement and litigation matters and special investigations for private and municipal clients. Having worked on matters involving every environmental statute, a significant portion of Gwen's practice focuses on helping clients understand the regulatory and litigation risks associated with emerging contaminants, including PFAS and ethylene oxide, as well as plastics and asbestos. She also advises clients on environment, social and governance (ESG) issues and the impacts climate change can have on business operations.

Gwen spent more than twenty years in the public sector, serving as both an elected and appointed official at the state and local levels, as well as in various agencies within the federal government. She served as the Principal Legal Advisor (General Counsel) for Immigration & Customs Enforcement (ICE) in the U.S. Department of Homeland Security (DHS) and as Chief of Staff at the Environmental Protection Agency (EPA) during the Obama Administration.

In addition, Gwen served as the EPA Region 4 (Southeastern Region) Regional Administrator (RA), where she was responsible for establishing and implementing environmental policy, including the principals of environmental justice for eight southeastern states and six federally recognized tribes. Gwen finalized the Region's Environmental Justice (EJ) Policy (previously stagnated for 10 years), instituted regular environmental justice information sessions with state partners and communities, and created a Regional EJ Interagency Working Group with other federal agencies to strategically and comprehensively address community concerns. Gwen also instituted the Colleges and Underserved Community Partnership Program (CUPP) which partnered college students with senior federal staff to provide much needed environmental, health and technical services to some of the poorest jurisdictions in their region.

Notably, Gwen is a twice elected District Attorney for the Stone Mountain Judicial Circuit in DeKalb County, Georgia. She was the first African American and first woman to hold that office and has been recognized by Forbes on their inaugural list of Top 200 Lawyers.

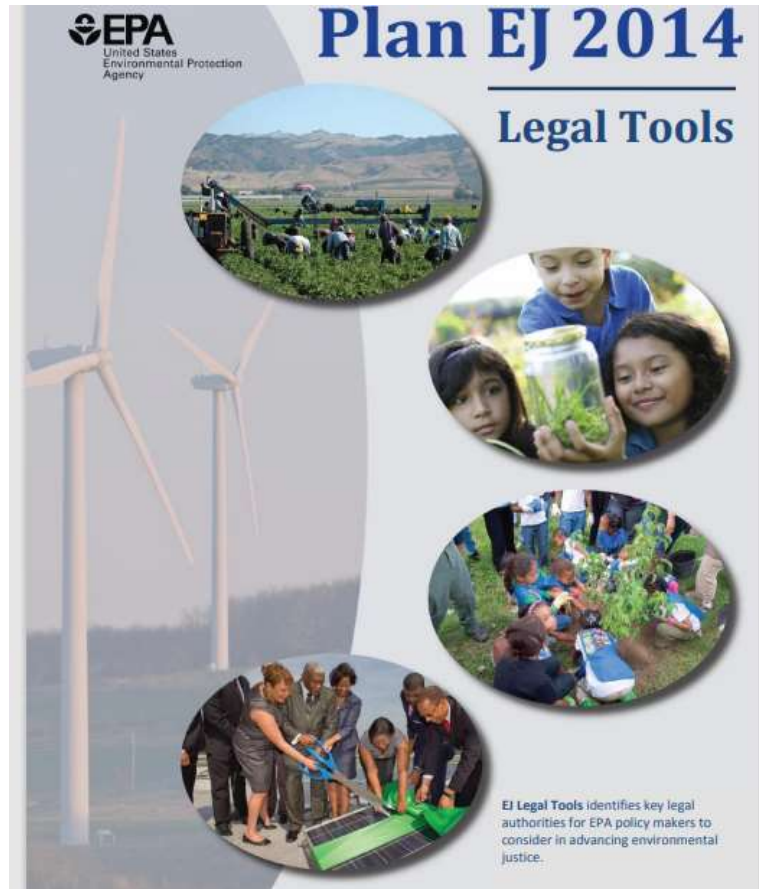
# EJ & Indigenous Issues: The Overlap and the Differences



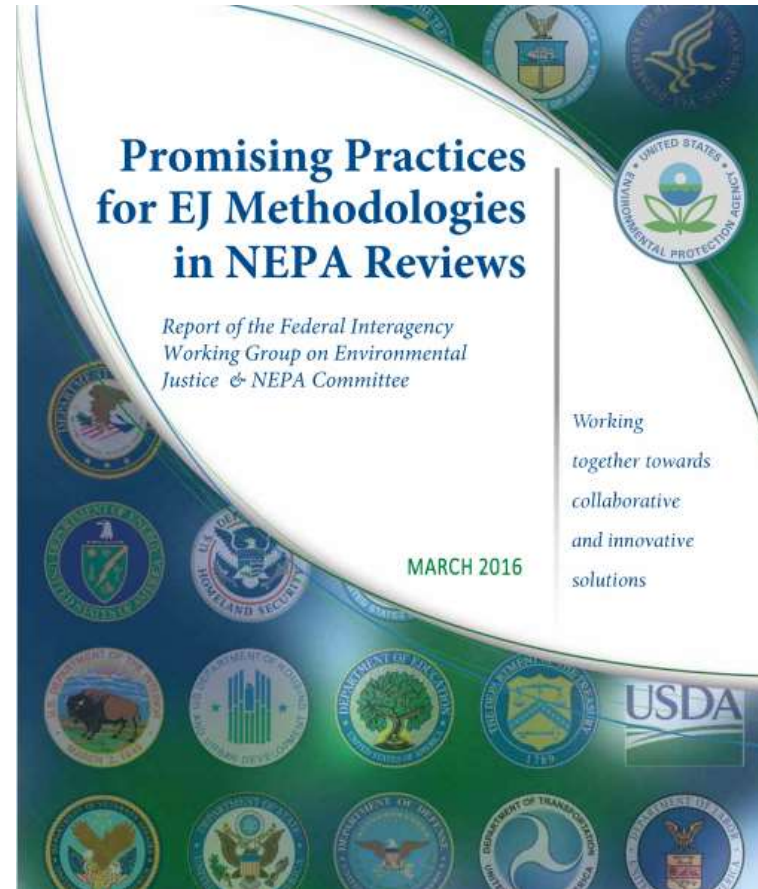


# Past is Prologue: EPA may reinstitute its previous guidance

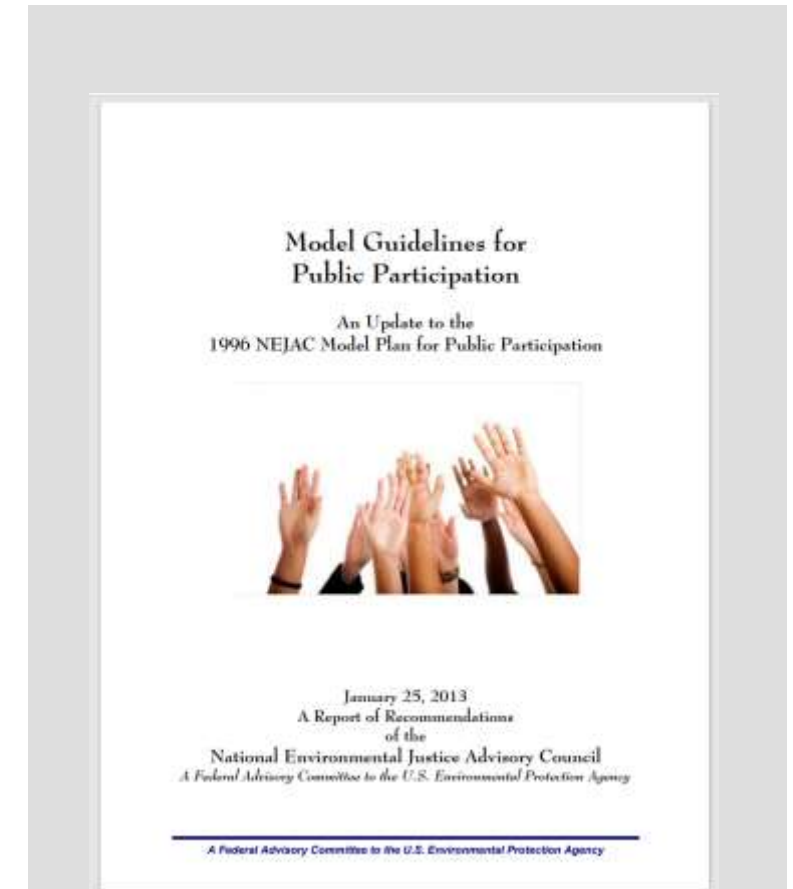
## Legal Tools



## NEPA Engagement



## Public Participation



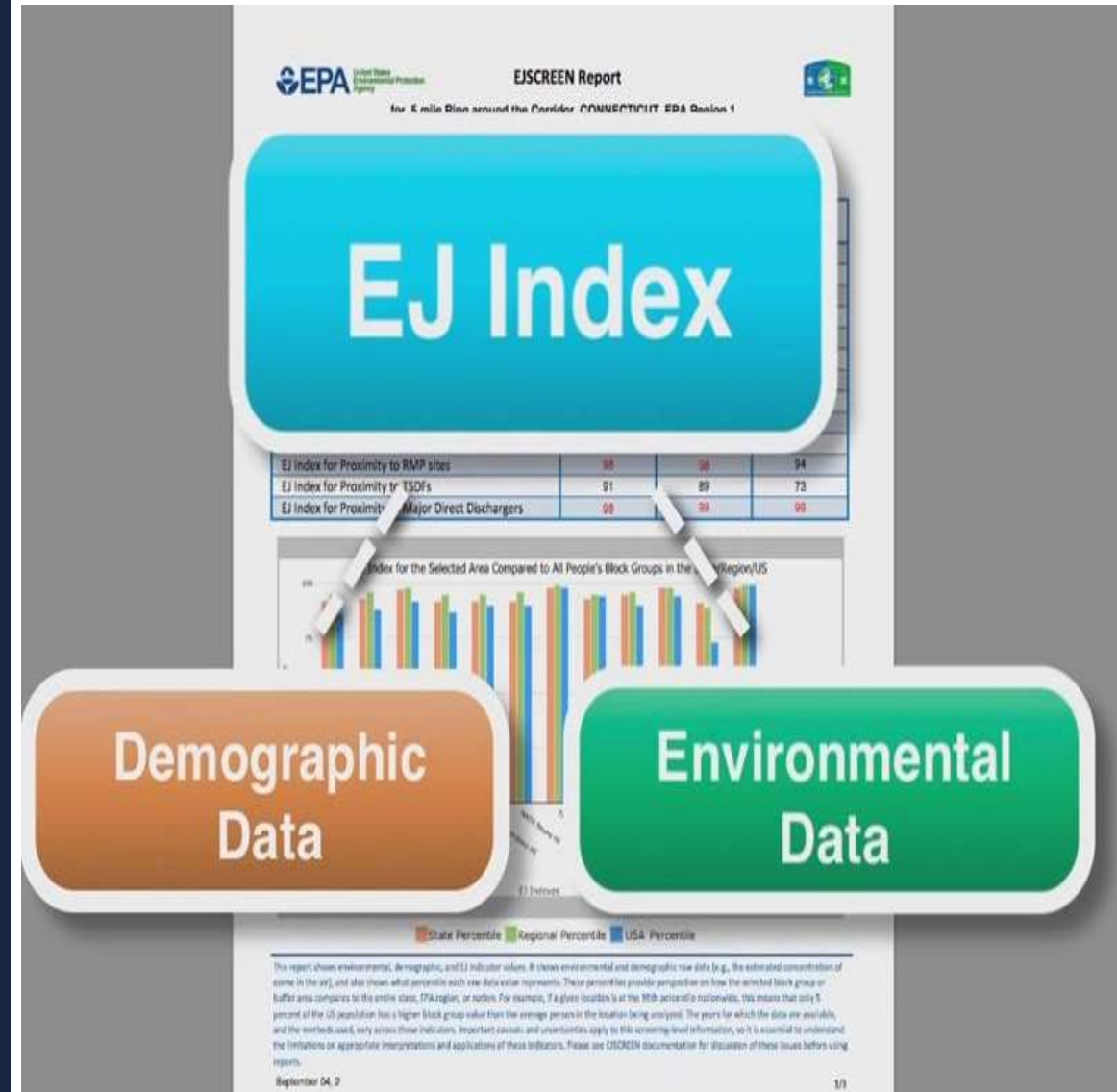
# EJ Screening Tools

# EJSCREEN

## EJ Screening Tools

### By EPA

- The Mapping Tool Analyzes:
  - Primary EJSCREEN Datasets
    - 7 Demographic Indicators
    - 12 Environmental Indicators
    - 12 EJ Indexes
  - Additional Environmental Data
  - Additional Demographic Data
  - Other Data Sources

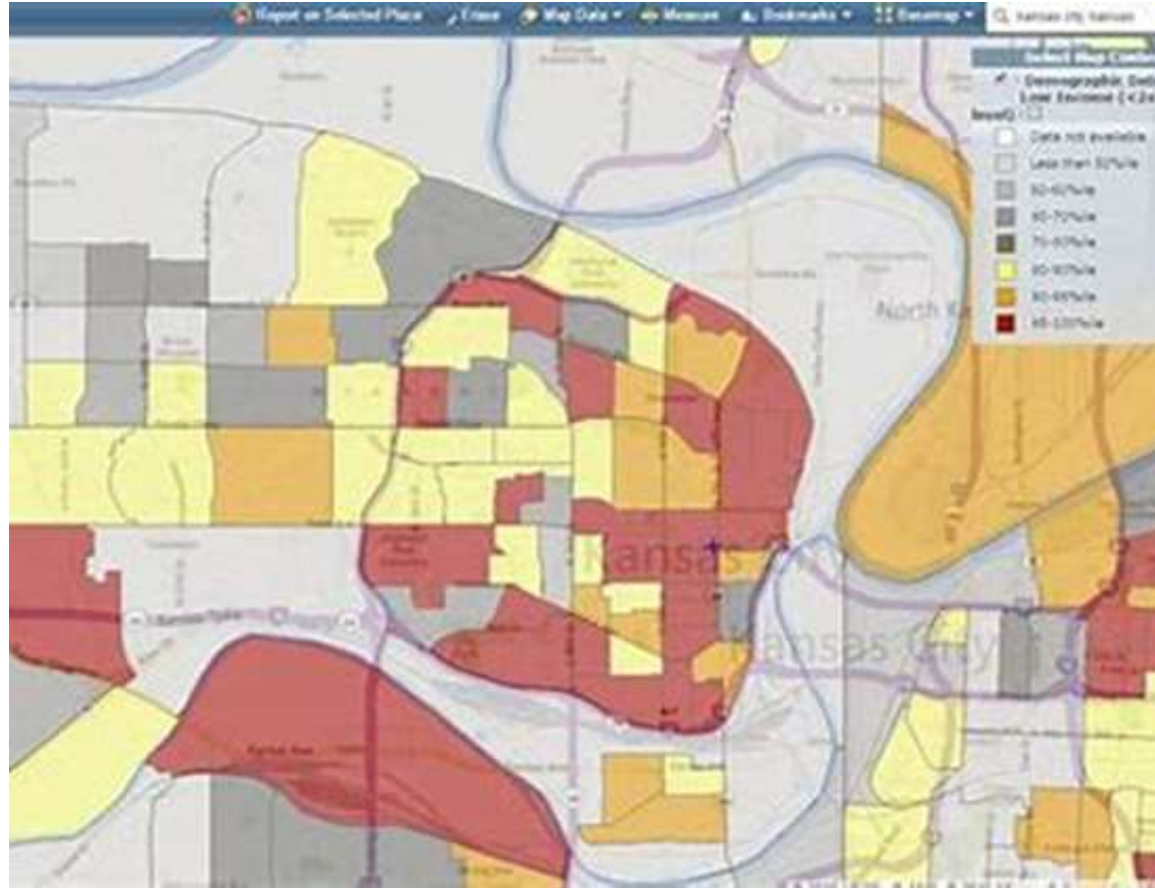




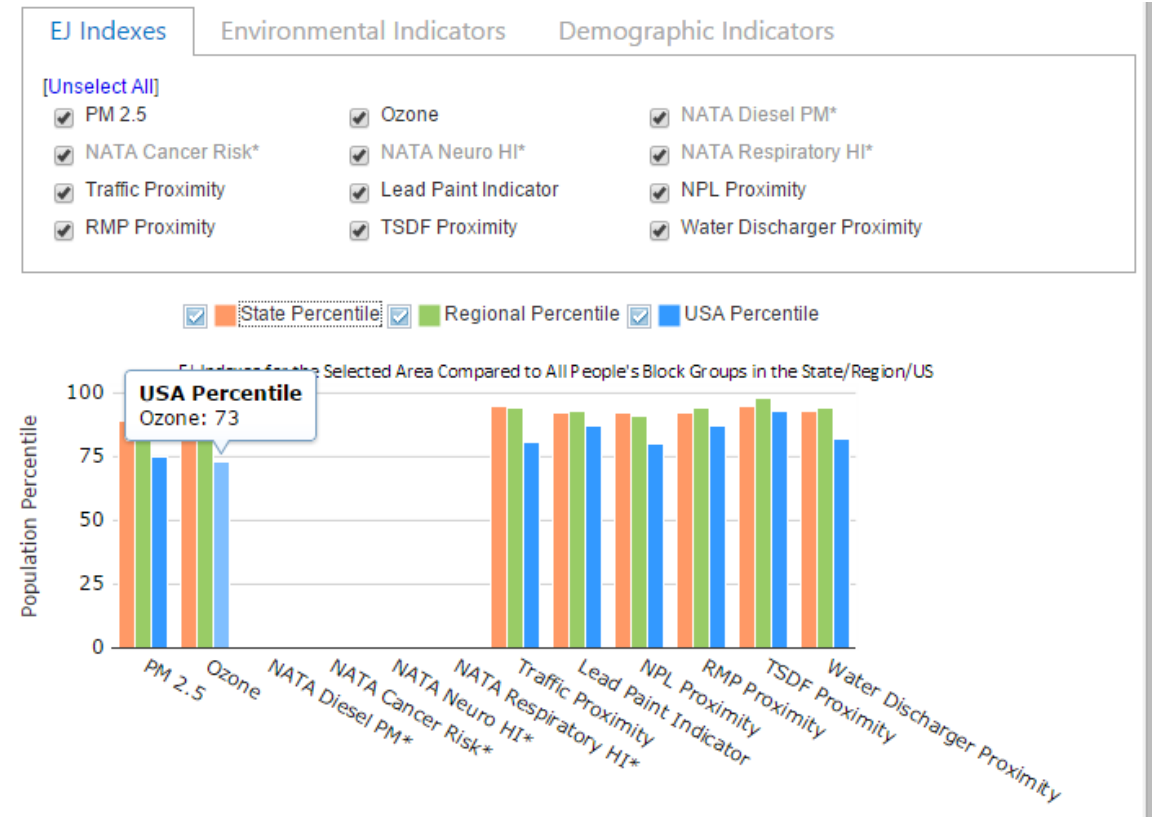
# EJ SCREEN Benefits

EJ Screening Tools

## Heat Mapping



## Comparative Reports



EJ Indexes  
 \*The National-scale Air Toxics Assessment (NATA) environmental indicators and EJ indexes will be added into EJSCREEN during the first full public update after the soon-to-be-released 2011 dataset is made available.



# EJ SCREEN Caveats and Limitations

## EJ Screening Tools

- EJSCREEN does not cover all environmental or EJ issues
- Environmental indicators are mostly screening level proxies
- Indicators are not always up to date
- Census data has limitations and can obscure smaller communities (data dilution)
- Not a substitute for “on the ground” information (verify results)

# Climate & Economic Justice Screening Tool (CEJST)

## By the Council on Environmental Quality (CEQ)

- Communities are deemed disadvantaged if
  - if they are in census tracts that meet the thresholds for at least one of the tool's categories of burden, or
  - if they are on land within the boundaries of Federally Recognized Tribes.
- Plus, a census tract that is completely surrounded by disadvantaged communities and is at or above the 50% percentile for low income is also considered disadvantaged.

# Climate & Economic Justice Screening Tool (CEJST)

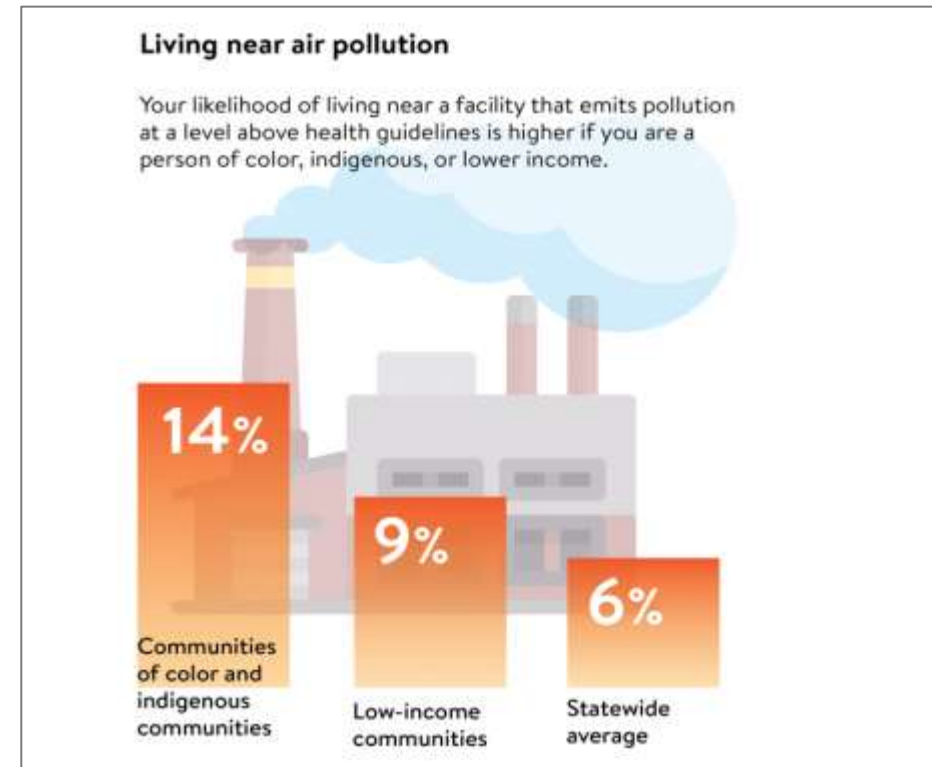
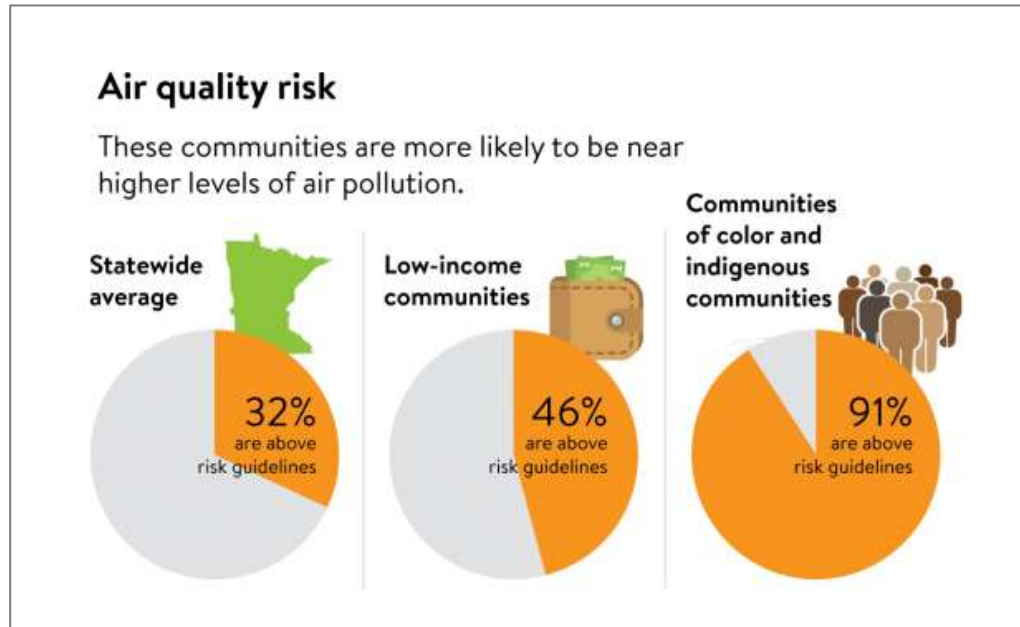
## By the Council on Environmental Quality (CEQ)

And  $\geq 65^{\text{th}}$  percentile for low income

- Focuses on eight categories:
  - **Climate Change:**  $\geq 90^{\text{th}}$  percentile for expected agriculture loss rate, building loss rate, population loss rate or projected wildfire risk
  - **Energy:**  $\geq 90^{\text{th}}$  percentile for energy cost of PM2.5 in air
  - **Health:**  $\geq 90^{\text{th}}$  percentile for asthma, diabetes, heart disease or low life expectancy
  - **Housing:**
  - **Legacy Pollution:** have  $\geq 1$  abandoned mine land or former defense site or above the  $90^{\text{th}}$  percentile for proximity to hazardous waste sites, NPL site or RMP facility
  - **Transportation:**  $\geq 90^{\text{th}}$  percentile for diesel particulate matter exposure, transportation barriers or traffic proximity and volume
  - **Water & Wastewater:**  $\geq 90^{\text{th}}$  percentile for UST or wastewater discharges
- **Workforce Development:**  $\geq 90$  percentile for linguistic isolation, low median income, poverty or unemployment

# What are “disproportionate impacts?”

- Analysis focuses on two questions:
  1. Are pollution levels decreasing everywhere and for everyone equally?
  2. Are pollution levels higher for one population than for others?





# Congressional Action:

## Environmental Justice Act of 2021

S. 2630 and HR 2434

- Codifies and expands the 1994 Executive Order on Environmental Justice
- Codifies the existing National Environmental Justice Advisory Council (NEJAC) and environmental justice grant programs.
- Establishes requirements for federal agencies to address environmental justice.
- Requires consideration of cumulative impacts and persistent violations in federal or state permitting decisions under the Clean Water Act and the Clean Air Act.
- Clarifies that communities impacted by events like the Flint water crisis may bring statutory claims for damages and common law claims in addition to requesting injunctive relief.
- Reinstates a private right of action for discriminatory practices under the Civil Rights Act.

## Environmental Justice For All Act

S. 872 and HR 2021

- Establishes several advisory bodies, programs and requirements to address disproportionate adverse health and environmental effects on communities of color, low-income, tribal and indigenous populations
- Prohibits disparate impacts on the basis of race, color or national origin.
- Directs agencies to prepare impact reports that assess impacts on EJ communities
- Creates federal level advisory bodies and funding opportunities for communities in need
- Establishes reporting requirements for chemicals and toxic ingredients in products like cosmetics