

# Environmental Justice Update 2024: Approaching the Crossroads

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# Today's Agenda

- ✓ Defining Environmental Justice (EJ)
- ✓ Federal Activities
- ✓ Cumulative Impact Assessments
- ✓ EJ Tools
- ✓ State Programs
- ✓ Environmental Justice Actions
- ✓ The Crossroads: EJ in 2024 and the Future
- ✓ How to prepare / What's next?



# What is Environmental Justice?

There are several definitions of Environmental Justice from state to state, but EPA's official definition 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."



# Federal EJ Activity in 2023

- Numerous draft guidance documents
  - Additional executive orders affirming the administration's commitment to EJ
  - How to use existing regulatory tools to address EJ concerns
  - Requiring government agencies to address EJ in their programs
  - How to conduct a Cumulative Risk Assessment (CRA)
  - The challenge: How to tie quantifiable science to EJ goals. (SAB Project)
- Opening of U.S. EPA Office of Environmental Justice and External Civil Rights headed by Matt Tejada, and announcement of regional EJ offices.





# Federal EJ Activity in 2023

- Billions of dollars in EJ funding and grants through the Inflation Reduction Act (IRA) and other programs
  - Fenceline and hyper-local community monitoring programs
  - Local community projects to combat pollution and climate change
  - Outreach programs
  - Environmental projects (infrastructure, greenspaces, etc.)
  - \$177 million to create 17 technical assistance centers to help EJ advocacy organizations navigate the grant process.



# WHEJAC Involvement

The White House Environmental Justice Advisory Council (WHEJAC) has been increasingly active in commenting on regulatory and policy matters.

- WHEJAC and other EJ advocates are increasingly speaking out against Carbon Capture and Storage (CCS) programs.
  - Claim carbon management programs extend the life of fossil fuel plants.
  - Claim that the technology is not proven.
  - Opposition to Louisiana and other states “primacy” in issuing permits for CCS Projects.
- Involvement in Phase 2 National Environmental Policy Act (NEPA) discussions.
  - Inclusion of mitigation strategies vs. streamlined permitting.
- Advocated separate PM<sub>2.5</sub> NAAQS for EJ communities
  - Recommended lowering annual PM<sub>2.5</sub> NAAQS to 8 µg/m<sup>3</sup> for all of the United States
  - If not lowered for all of US, specific NAAQS for EJ communities.



# U.S. EPA Enforcement Tools

## Title VI of the Civil Right Act states:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

- ❑ Threat of lost federal funding.

## Clean Air Act (CAA) Section 303: Emergency Powers

- ❑ Imminent and substantial endangerment to public health/welfare/environment.
- ❑ Allows for immediate shutdown of suspect source
- ❑ Shutdown order in effect for no more than 60 days







# Recent U.S. EPA Setbacks in EJ

- ❑ In December 2023, Deputy Assistant Administrator for Environmental Justice Matt Tejada resigned from EPA to take a position at the National Resources Defense Council. No replacement yet named.
- ❑ June 2023: Overturn of permit denial for Reserve Management Group in Illinois.
- ❑ June 2023: Upholding of permit issued to asphalt plant located near EJ community in Michigan
- ❑ July 2023: Loss on appeal of NSR Reactivation PSD requirement for Limetree Bay Refinery, which had been shut down via CAA Section 303 action.
- ❑ In Louisiana, 15 air permits for Formosa Chemicals that had been denied by a Louisiana court partially on EJ grounds reinstated on appeal.
- ❑ On deck: Lawsuit with Denka Performance Elastomer CAA Section 303 action stating that the plant's operations present an imminent danger to public health due to its chloroprene emissions.

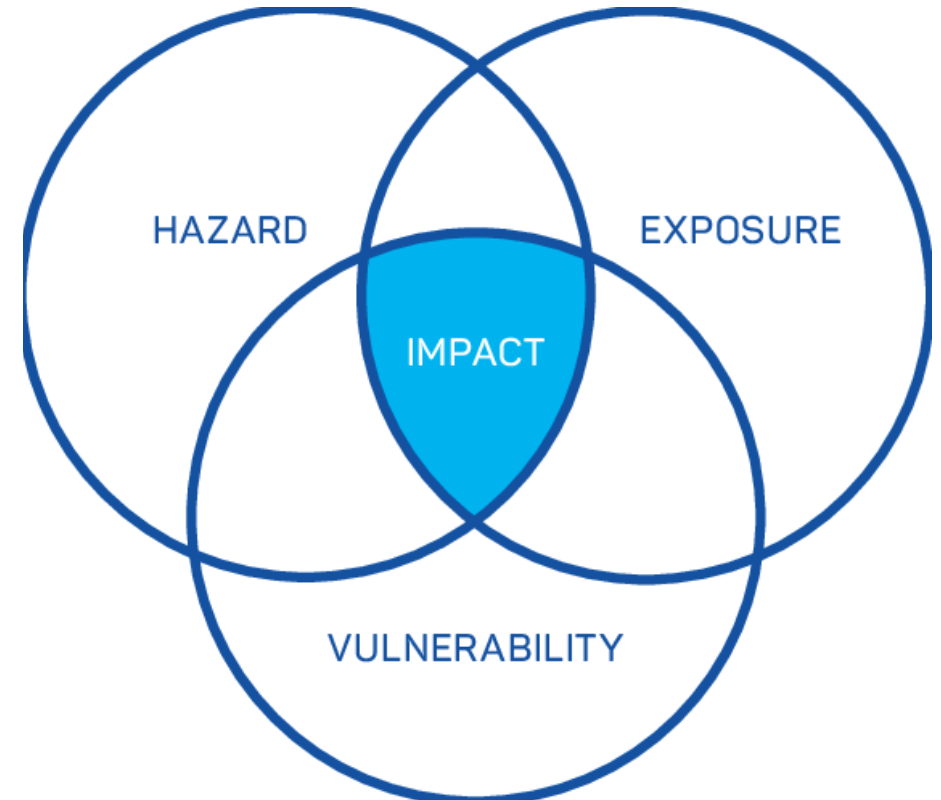


# U.S. EPA Setbacks in Title VI Reviews

- May 2023: Louisiana sues EPA regarding two Title VI investigations in State, claiming EPA overstepped authority. U.S. EPA quickly withdraws, but Louisiana does not drop the case.
- August 2023: EPA reaches agreement to end Title VI investigation against Michigan EGLE permitting program on terms favorable to the state.
- December 2023: EPA closes Texas Title VI investigations.
- January 2024: Judge's decision in Louisiana not only allows case against EPA to continue but includes injunction preventing EPA from using Title VI in enforcement against “disparate impacts” – All Title VI investigations are now on hold

# Cumulative Impact Assessments

- Not a new idea: Initially floated by Bush administration in 2003, raised in Obama's 2014 environmental agenda but stalled
- Assesses cumulative impacts from overlapping environmental hazards:
  - Air, water, waste
  - Public health
  - Non-chemical stressors (higher at-risk local population, etc.)
- Certain populations more vulnerable due to higher exposure and compromised ability to cope with stressors
- Not limited to just your facility
- EPA expected to release guidelines by the end of 2021, then Q1 2022, now? Equity Action Plan said implementation by September 2023...





# Cumulative Impact Assessments – The Challenge

- ❑ In the absence of federal guidance, states have developed their own
- ❑ Many tools, rules and policies being tuned to support cumulative impact assessments
- ❑ The tools and guidance that have been developed are generally flawed:
  - Lack information on how to determine whether an impact is adverse or not
  - Limited information on how states should consider the guidance in permitting decisions
  - Some states require mitigation of impacts, but there's no substantive guidance on mitigation
- ❑ Nevertheless, a project is expected to address the guidance and communicate the findings to the agency and public
- ❑ Some state guidance require consideration of public input and stakeholder involvement
- ❑ Recommendation considering cumulative EJ impact early in the permitting process, and being aware of the EJ landscape of the community



# Federal EJ Screening Tools

- Online mapping tools that combine demographic and environmental information at the census tract geography
- Used to identify areas experience disproportionate exposure to environmental hazards and impacts.
- New tools are being added monthly.
- Examples of some common tools include:
  - EJ Screen
  - ECHO Clean Air Tracking Tool (ECATT)
  - Climate and Environmental Justice TOOL (CEJST)

## Identifying Disproportionately Environmentally Impacted Communities

### [CDC/ATSDR Social Vulnerability Index](#)

The Social Vulnerability Index (SVI) is a tool that uses U.S. Census data to determine the social vulnerability of census tracts. The SVI ranks each tract on 15 social factors, including poverty, lack of vehicle access, and crowded housing, and groups them into related themes.

### [Office of Minority Health Social Vulnerability Index](#)

The Minority Health Social Vulnerability Index (SVI) is an extension of the CDC SVI that combines the 15 social factors included in the original CDC SVI with additional factors known to be associated with COVID-19 outcomes.

### [CDC Environmental Justice Dashboard](#)

The Environmental Justice dashboard brings together data and information that can be used to identify communities vulnerable to environmental exposures.

### [EPA's Environmental Justice Screening and Mapping Tool "EJ Screen"](#)

EPA's EJScreen is a tool based on nationally consistent data and an approach that combines environmental and demographic indicators into maps and reports.

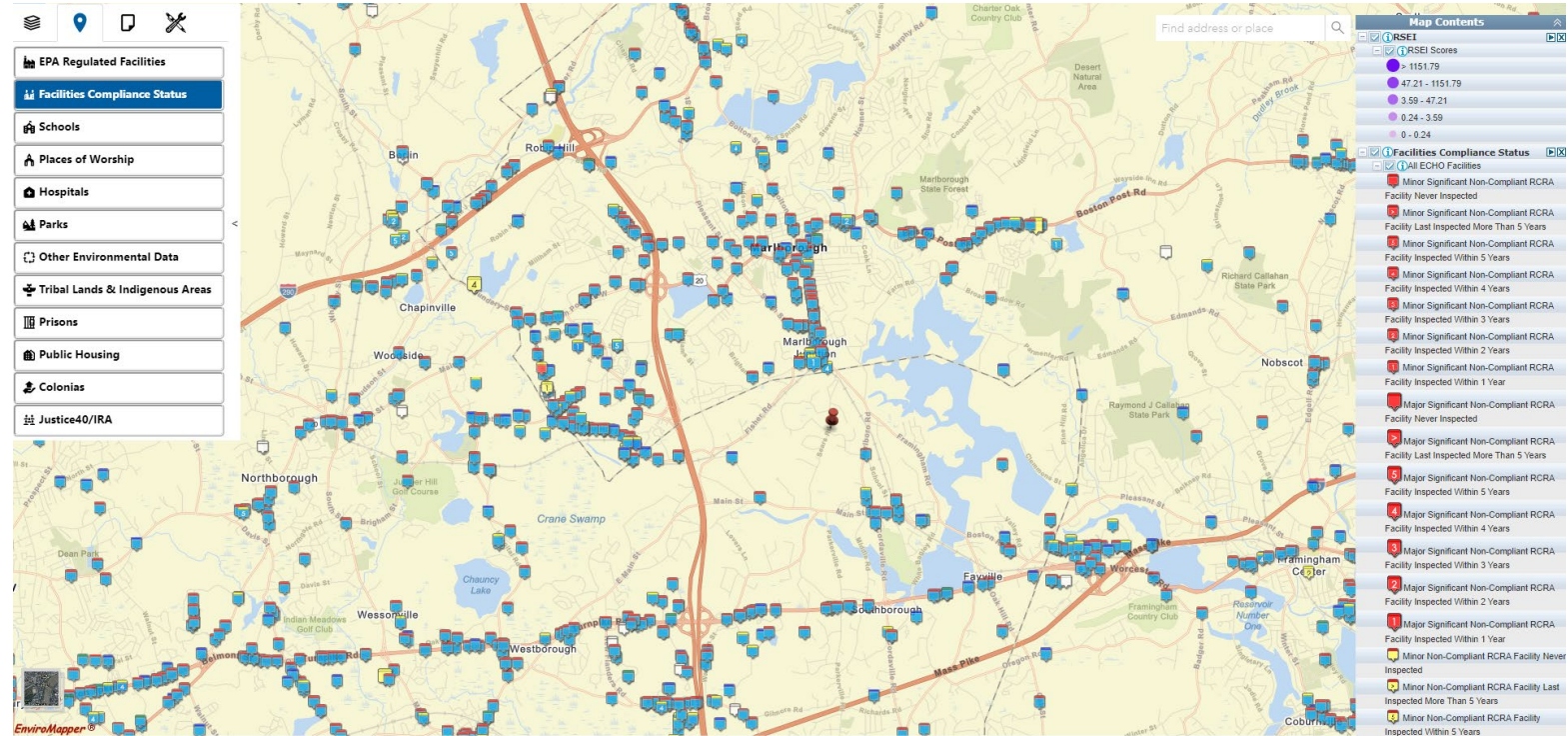
### [CEQ Climate and Economic Justice Screening Tool](#)

The CEQ-created geospatial Climate and Economic Justice Screening Tool utilizes interactive mapping capabilities to identify communities that are marginalized, underserved, and overburdened by pollution. Many federal agencies will use the tool in implementation of the Justice40 Initiative goal of directing 40 percent of the overall benefits of



# EJScreen V2.2 – New Features

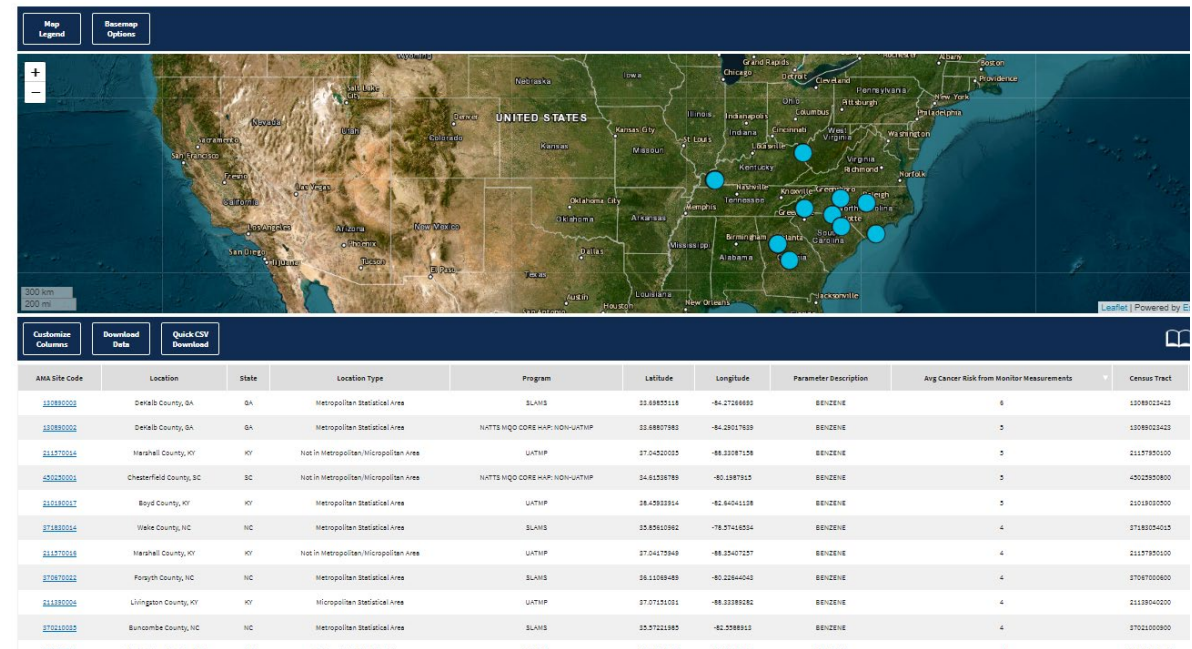
- Most data sources updated to more recent information
- New EJ Index: Toxic Releases to Air
- Revised modular standard report
- New Regulated Facilities layer
- Despite focus heading to cumulative impacts, SAB advises not to use EJScreen for that purpose



# ECHO Clean Air Tracking Tool (ECATT)

- ❑ Powerful tool released in May 2023
- ❑ Combines:
  - Emissions data by facility
  - Enforcement and compliance history
  - Environmental justice indicators
  - Air monitoring station data
  - Modeled toxics risk data
- ❑ Two different searches:
  - Air Monitoring Stations Search
  - Emissions Screener
- ❑ Intended for use in cumulative impact analyses

ECHO Clean Air Tracking Tool – Air Monitoring Stations Results





# ECHO Clean Air Tracking Tool (ECATT)

- ❑ Air Monitoring Stations Search
  - Searchable data on criteria pollutants (CAPs) and hazardous air pollutants (HAPs) across U.S. monitoring network
  - Allows search on individual or user-defined groups of pollutants
  - Allows display of trending data
  - Allows mapping of pollutant data vs. EJ data with thresholds (i.e. “all monitors with cancer risk > 10 in a million where 3+ EJ indices are over the 80<sup>th</sup> percentile”)
- ❑ Emissions Screener
  - Search by individual facilities, industry or pollutant
  - Who is emitting? Where? Which pollutants? How much?
  - Allows drill down on specific facility emissions and enforcement data



# State Activities

Many states now requiring EJ review as part of their permitting process and in other programs, whether formally documented or not:

- ❑ New Jersey led the way with first law incorporating EJ requirements into their permitting program.
- ❑ Colorado has become the 2<sup>nd</sup> – May require toxics modeling for non-Major sources in state for the first time.
- ❑ Texas – Incorporated EJ requirements and Public Information Plan (PIP)
- ❑ Alabama – Adding EJSCREEN report to all permit notices
- ❑ Illinois – Requires site-wide modeling for all permit applications with ANY emissions increases.

# Environmental Justice Update – States:

## □ New Jersey

- Finalized the state EJ rule on April 17<sup>th</sup>, 2023
- Applicants must submit an Environmental Justice Impact Statement (EJIS) for projects in/adjacent to an overburdened community (OBC) as shown on the NJ EJ Mapping tool:
  - at least 35 percent of the households qualify as low-income households;
  - 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.
- 60-day public comment period and public meetings requirement, recorded and made available to the public





# New Jersey EJ Process

- ❑ If in / adjacent to an OBC
- ❑ Evaluate 26 environmental and public health stressors in OBC vs. 50<sup>th</sup> percentile non-OBC geographic point of reference in county or state
- ❑ If OBC is greater, that stressor is counted.
- ❑ Compared the total number of stressors > 50% against lower of county or state average. If greater, OBC is subject to “adverse cumulative stressors.
- ❑ Each affected stressor plus any additional that will be impacted must be addressed in EJIS
- ❑ But... then what??



# States with Environmental Justice Tools

- ❑ Arizona
- ❑ California
- ❑ Colorado
- ❑ Connecticut
- ❑ Delaware
- ❑ Illinois
- ❑ Massachusetts
- ❑ Maryland
- ❑ Michigan
- ❑ Minnesota
- ❑ New Jersey
- ❑ New Mexico
- ❑ New York
- ❑ North Carolina
- ❑ Pennsylvania
- ❑ Rhode Island
- ❑ Vermont
- ❑ Virginia
- ❑ Washington

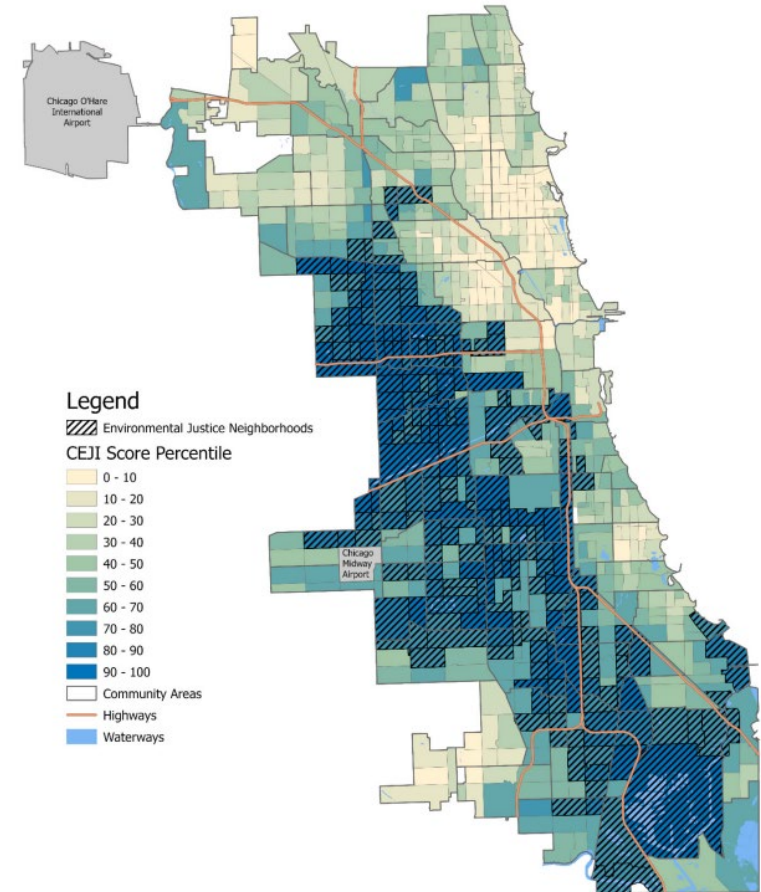


# Municipal Activities

2023 saw an increase in municipal government agencies taking EJ into their own hands:

- ❑ City of Chicago Cumulative Impact Assessment
- ❑ City of Youngstown, OH ban on pyrolysis projects
- ❑ Community of Perryman, MD developed its own EJ report

While communities may not have EJ related authority or laws, they can use their local zoning ordinances to assess EJ concerns.





# Environmental Justice 2024 – At the Crossroads

## □ Federal:

- Continued focus on community outreach, funding for local monitoring programs, and enhanced enforcement.
- Continued reliance on existing rules to encourage states to act on EJ amidst growing legal challenges.
- Further development of tools and methodology towards cumulative impact analyses.

## □ States and Municipalities:

- Continue to develop rules for considering EJ in permitting.
- EJ becomes a concern in siting considerations.

## □ Key Questions:

- Who replaces Deputy Administrator Tejada as head of EJ, and how does it impact policy?
- What happens after the 2024 election?





# Summary of EJ Risks

- Environmental Justice concerns are permeating every aspect of environmental regulation and policy across all media and agencies.
- Billions of federal dollars are being made available for hyper-local and fence line monitoring programs and to promote public engagement.
- Tools are being rolled out almost monthly to make data available to the public and government agencies.
- NGO's are bringing EJ concerns to all complaints against proposed permit actions because of the hot-button nature of the topic.
- When EJ concerns are raised, simple compliance with permit requirements may no longer be enough.
- Cumulative impact assessment requirements are coming (we think?!), but in what form is not yet known.





# What Can You Do?

- ❑ Be proactive and tell your own story: Engage now!
  - Communicate, communicate, then communicate some more! Don't wait for your next project.
  - Know the environmental challenges of the communities around you.
  - Know their concerns to help most effectively engage: what are the demographics and drivers?
  - States are finding their way too, engage with them on projects as soon as practical
- ❑ Incorporate time and budget for EJ in permitting projects:
  - Outreach programs
  - Extended public comment period and time to respond
  - Potential costs related to mitigation or additional engineering.

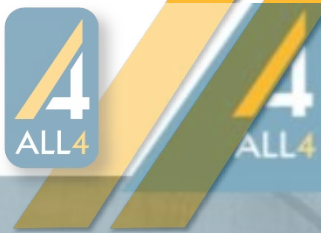




# What Else Can You Do?

- The data is out there – context is important
  - Review nearby communities for EJ concerns: EJSCREEN, CEJST, ECATT, state tools, etc.
  - Review potential exposure points: ECHO database, Envirofacts, AirToxScreen
  - Know your emissions profile – Be accurate with your reports. Beware overestimates
- Be aware of the regulatory environment
  - State and local EJ rules and requirements
  - EJ actions and government response
  - Again – engage with your state and local agencies ASAP.





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