

# Emerging Sustainability and EJ Issues



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**1. CEQ GHGs & Climate Change under NEPA**

**2. Updated Social Cost of Carbon**

**3. EJ: Latest Federal Actions & Guidance:**

EPA Legal Tools for EJ: Cumulative Impacts Addendum

Addressing EJ in Air Permitting

**4. How EJ is Impacting Industry**

## GHGs & Climate Change:

- ▶ CEQ Interim Guidance
- ▶ Updated Social Cost of GHGs

# CEQ Notice of Interim Guidance for Consideration of GHGs and Climate Change under NEPA

- ▶ On January 9, 2023, CEQ published interim guidance for use by federal agencies when conducting NEPA review
- ▶ Guidance went into effect immediately
- ▶ Public comments due 3/10/2023, and CEQ will either revise based on comments or finalize interim guidance
- ▶ Background:
  - 4/20/2022 – CEQ issued final rule revising portions of NEPA
  - Phase 1 of Biden Admin rulemaking to reverse some Trump Admin changes to NEPA
  - CEQ has indicated that Phase 2 of rulemaking will provide more guidance on assessing GHGs and climate change in NEPA reviews
  - The 1/9/2023 interim guidance is NOT Phase 2 – instead it builds upon a 2016 CEDQ guidance document
  - Interim guidance to be used until this Phase 2 rulemaking is final – however it is not binding

# CEQ Interim Guidance Recommendations

- ▶ Integration of GHG emissions and climate change considerations in evaluating proposed actions, reasonable alternatives and potential mitigation and resilience measures;
- ▶ Quantification of “Reasonably foreseeable” GHG emissions increases and decreases of proposed action (and reasonable alternative) relative to baseline
- ▶ Assessment of potential climate change effects from proposed action
- ▶ Consider reasonable alternatives that would make actions and affected communities more resilient to effects of climate change
- ▶ Assessment of effects of climate change on proposed action
- ▶ Incorporation of EJ considerations in analysis:  
*"Consider whether the effects of climate change in association with the effects of the proposed action may result in disproportionately high and adverse effects on communities with environmental justice concerns, which often include communities of color, low-income communities, and Tribal Nations and Indigenous communities, in the area affected by the proposed action."*

# Quantification of Reasonably Foreseeable GHG Emissions

- ▶ Assess direct, indirect and cumulative GHG emissions increases and decreases over life of proposed action
  - **Direct emissions** - caused by federal action that occur at same time and place
  - **Indirect emissions** - caused by federal action but occur later in time or farther in distance
  - **Cumulative emissions** - result from the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what entity (federal or nonfederal) undertakes those actions
- ▶ Also assess same for all alternatives (including no action)
- ▶ In assessing cumulative effects, consider whether results in disproportionate impacts to EJ areas
- ▶ Consider mitigation measures to avoid or reduce GHG emissions

# Assessment of Climate Change Effects

- ▶ Potential climate change effects of proposed action
  - How does action (and alternatives) help meet or detract from meeting climate action goals and commitments?
  - Use best social cost of carbon estimates to translate climate impacts into dollars
- ▶ Potential impacts of climate change on proposed action
  - Perform scenario analysis of climate change impacts to proposed action now and in future years
  - Assess vulnerabilities and address climate resilience and adaptation of proposed action

***“neither NEPA, the CEQ Regulations, or this guidance require the decision maker to select the alternative with the lowest net GHG emissions or climate costs or the greatest net climate benefits.”***

# Updated Social Cost of Carbon

- ▶ EPA's analysis of climate benefits of proposed NSPS 0000b/c rules included evaluation of climate benefits using updated estimates of the social cost of GHGs (SC-GHG)
- ▶ SC-GHG is the monetary value of the net harm to society from emitting a metric ton of that GHG to the atmosphere in a given year.
- ▶ Updated SC-GHG estimates incorporate recent research addressing recommendations of the National Academies of Science, Engineering, and Medicine (2017)
- ▶ EPA seeking public comment on accompanying technical report –estimates SC-GHG at \$120, \$190 or \$340 per metric ton of CO<sub>2</sub>, using discount rates of 2.5 %, 2.0 % and 1.5 %, respectively.

SC-GHG	Trump Admin	Biden Admin (2020 dollars)	Latest EPA Values (2020 dollars)
CO <sub>2</sub>	\$7/metric ton	\$51/metric ton	\$190/metric ton
CH <sub>4</sub>	\$184/metric ton	\$1,500/metric ton	\$1,600/metric ton
N <sub>2</sub> O	\$2,820/metric ton	\$18,000/metric ton	\$54,000/metric ton

## Environmental Justice:

- ▶ Latest Federal Actions and Guidance
  - Legal Tools for EJ
  - Addressing EJ in Air Permitting
- ▶ How EJ is Impacting Industry

# Federal EJ Initiatives Abbreviated Timeline

- ▶ **Feb 2023** – EPA announces \$550M in grants to reduce pollution in disadvantaged communities
- ▶ **Jan 2023** – EPA Legal Guidance on Identifying, Addressing Cumulative Impacts to Advance EJ, Equity
- ▶ **Dec 2022** - EPA's 8 Principals for addressing EJ in Air Permitting
- ▶ **Nov 2022** – EPA announces \$53M in grants for EJ community monitoring projects
- ▶ **Fall 2022** – EPA Responses to Civil Rights Act Title VI complaints for LDEQ, TCEQ ... (EPA audits, letters of concern)
- ▶ **Sep 2022** – CalEPA & EPA Region 9 EJ Enforcement MOU and EJ Enforcement Action Plan
- ▶ **Sept 2022** – Inflation Reduction Act includes **\$3 Billion** for EJ & Climate Justice
- ▶ **Aug 2022** - EPA Interim EJ and Civil Rights in Permitting FAQs
- ▶ **Spring/Summer 2022** – EPA & state monitoring and site visits Texas & Louisiana petrochemical facilities
- ▶ **May 26, 2022** – EPA Legal Tools to Advance Environmental Justice (206-page document)
- ▶ **May 23, 2022** – Biden-Harris Admin outlines EJ progress in report to Congress on implementing White House EJ Advisory Council (WHEJAC) recommendations
- ▶ **May 5, 2022** – DOJ and EPA launch comprehensive EJ Enforcement strategy and restore SEPs to help communities
- ▶ **May 5, 2022** – DOJ announces Office of Environmental Justice (OEJ)
- ▶ **Feb 2, 2022** – EPA Office of Inspector General - Refinery Benzene Fenceline Monitoring Investigation
  - Top EPA management challenges include integrating and leading EJ, including communicating risks.
- ▶ **Jan 22, 2022** - EPA hires addt'l criminal investigators
- ▶ **Nov 2021** – EPA Administrator Regan’s “Journey for Justice Tour” (MS, LA, TX)
- ▶ **July 20, 2021** – White House Interim Implementation Guidance for the Justice40 Initiative
  - Goal of delivering 40% of overall benefits of relevant fed investments to disadvantaged communities
- ▶ **Jun 2, 2021** – EPA Administrator Regan FY 2022 Budget Request - **\$900 mil for EJ & Civil Rights**

# Environmental Justice: Recent Federal Actions and Guidance

- ▶ January 2023 - **EPA Legal Tools to Advance EJ – Cumulative Impacts Addendum**
  - ◆ May 2022 document: EPA Legal Tools to Advance Environmental Justice
- ▶ December 2022 - **EPA Memo Addressing EJ in Air Permitting** (and release of EJScreen 2.1)



## EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum

January 2023

Office of General Counsel

U.S. Environmental Protection Agency  
Washington, D.C. 20460

This document discusses a variety of federal statutory and regulatory provisions but does not itself have legal effect and is not a substitute for those provisions and any legally binding requirements that they may impose. It does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits to any person. To the extent there is any inconsistency between this document and any statutes, regulations or guidance, the latter take precedence. EPA retains discretion to use or deviate from this document as appropriate.

Publication No.: 360R22002

The cover features a blue and green geometric design. At the top right, it says 'MAY 2022'. In the center is the EPA logo. Below the logo, the title 'EPA Legal Tools to Advance Environmental Justice' is written in white on a dark blue background. A central image strip shows three scenes: a community event with a red car, a group of people talking, and a polluted waterway. At the bottom, it reads 'OFFICE OF GENERAL COUNSEL' and 'U.S. ENVIRONMENTAL PROTECTION AGENCY • WASHINGTON, D.C. 20460'.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

December 22, 2022

OFFICE OF  
AIR AND RADIATION

### MEMORANDUM

**SUBJECT:** Principles for Addressing Environmental Justice in Air Permitting

**FROM:** Joseph Goffman  
Principal Deputy Assistant Administrator  
Office of Air and Radiation

**JOSEPH GOFFMAN**  
Digitally signed by  
JOSEPH GOFFMAN  
DN: cn=JOSEPH GOFFMAN,  
o=EPA, ou=OAR, email=jgoffman@epa.gov

**TO:** Air and Radiation Division Directors  
Regions I-X

I am pleased to share the attached "Principles for Addressing Environmental Justice in Air Permitting" for your immediate use. These principles provide an interim operating framework for identifying, analyzing, and addressing environmental justice concerns in the context of Clean Air Act (CAA) permitting as EPA continues to build more tools and explore additional opportunities to advance environmental justice and equity with our co-regulatory partners, communities, and other stakeholders. EPA regional air permitting staff are encouraged to apply these eight principles in developing federal CAA permit decisions. Regions are equally encouraged to share these principles with state, tribal, and local partners and to work proactively and collaboratively with those partners to facilitate consideration and application of these principles in their air permitting actions.

I want to thank the national EPA workgroup that developed these principles and supporting information resources for EPA permit writers. The principles reflect a number of best practices the regions have developed over many years, including early identification of potential environmental justice concerns in specific locations and early, ongoing engagement with communities throughout the permitting process. The principles also recognize the various types of Clean Air Act permits and the need to determine the appropriate scope of an environmental justice analysis on a case-by-case basis. Similarly, opportunities for addressing disproportionately high and adverse effects associated with a permitting action may also vary from one situation to another. The principles encourage consideration of all relevant statutory and regulatory authorities available to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent feasible. These may include state and local authorities as well as discretionary authorities under federal laws. Examples of legal discretion under existing federal authorities may be found in *EPA Legal Tools to Advance Environmental Justice*. The principles also recognize the importance of

# EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum - Jan 2023 (1 of 2)

- ▶ Outlines **EPA's legal authorities** through permitting, regulations, and grants that can be used to identify and address cumulative impacts.
- ▶ Although EPA is outlining its legal authority for, and urging agencies to conduct cumulative impact assessments, it is not providing any guidance on how to conduct them:
  - ◆ *“This Addendum is not intended to prescribe when and how the Agency should undertake specific actions, nor does it provide methodologies for how to conduct a cumulative impacts assessment”*

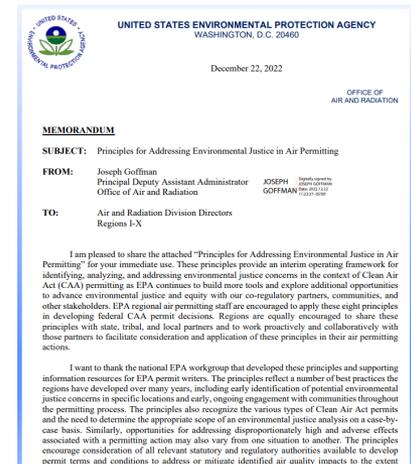
# EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum - Jan 2023 (2 of 2)

- ▶ It's organized in a fashion similar (by EPA Programs) to the May 2022 EJ Legal Tools document:
  - ◆ **CAA Programs** - NSPS, NAAQS, Toxics, Permitting, Accident Prevention, Info Collection, Imminent & Substantial Endangerment
  - ◆ **Water Programs**
  - ◆ **Waste Management & Emergency Response**
  - ◆ **Pesticides and Toxics Programs**
  - ◆ **Environmental Review Programs** – NEPA, Section 309
  - ◆ **Civil Rights in Federal Assistance Programs**
- ▶ Unlike the May 2022 document, this one does not have a specific chapter for:
  - ◆ **Tribal Programs**

# EPA's Principles for Addressing EJ in Air Permitting

- Memo & Attachment issued by EPA OAR to EPA Regions (12/22/22)
- Outlines 8 principles for EJ considerations
- References *Interim Environmental Justice & Civil Rights Permitting FAQs*

1. **Identify communities** with potential environmental justice concerns
2. **Engage early** in the permitting process to promote meaningful participation and treatment
3. Enhance **public involvement** throughout the permitting process
4. Conduct a **“fit for purpose” environmental justice analysis**
5. Minimize and mitigate **disproportionally high and adverse effects** associated with the permit action
6. Provide federal support throughout the air permitting process
7. Enhance **transparency** throughout the air permitting process
8. Build capacity to enhance the consideration of environmental justice in the air permitting process



# EPA's “Fit for Purpose” EJ Analysis (Principal #4)

(1 of 2)

EJ analyses will vary according to specific circumstances of permit decision, but may include:

- ▶ Further evaluation of **demographic data** indicating **vulnerabilities** in the affected population;
- ▶ Further **input from stakeholders**, including the affected community;
- ▶ An **evaluation of existing environmental data**, including air monitoring, air modeling, or, as appropriate, data from other media;
- ▶ An evaluation of the facility's **compliance record**;
- ▶ An evaluation of **existing public health data** about the affected community;
- ▶ An evaluation of the permitting action's **potential health and non-health adverse effects** (e.g., noise, odor, and traffic);

# EPA's “Fit for Purpose” EJ Analysis (Principal #4)

(2 of 2)

EJ analyses will vary according to specific circumstances of permit decision, but may include:

- ▶ An evaluation of the **cumulative impact** of the permitting action together with impacts from other regulated and non-regulated sources of pollution in the community;
- ▶ An evaluation of the **potential effects** of the permitting action **on the health of a population** and the distribution of those effects within the population; and
- ▶ An evaluation of potential methods for **minimizing or mitigating adverse effects** on the community.

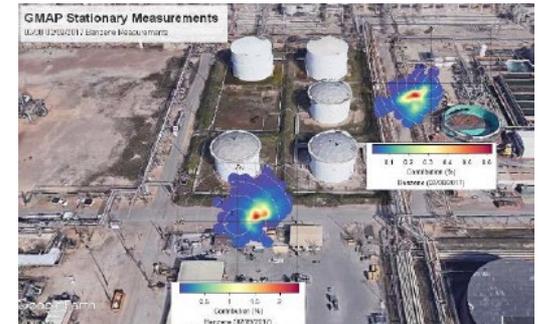
# EPA's Journey for Justice Tour posting Jan 2, 2022

- ▶ "EPA is announcing today a new Multi-Scale Monitoring Project called the **Pollution Accountability Team (PAT)** to provide strong environmental compliance and monitoring in the south, launching in Spring 2022.
- ▶ This program combines **high-tech air pollution monitoring with boots-on-the-ground inspectors** to address pollution and enhance enforcement at a community scale.
  - ◆ EPA's **ASPECT airplane will monitor facilities** from the sky while
  - ◆ **mobile vehicles like EPA's GMAP** will monitor pollution from the ground.
- ▶ At the same time, a team of **inspectors from across EPA regions will follow up to investigate** any emission detection findings at specific sites.
- ▶ EPA is also "making \$20 million in grants available from the American Rescue Plan to **enhance local air monitoring** for pollutants of greatest concern in communities facing health disparities."
- ▶ Committing EPA to **aggressively use its authority** to conduct **unannounced inspections** of suspected non-compliant facilities, as needed to protect public health. When facilities are found to be non-compliant, EPA will use all available tools to hold them accountable.

# EPA EJ Monitoring & Inspection Activities

## ▶ EPA & state agency monitoring & site inspections (TX & LA Gulf Coast)

- ◆ **NEIC** – National Enforcement Investigations Center
- ◆ **GMAP** - EPA monitoring van (Geospatial Measurement of Air Pollution) - Spring 2022
  - ▶ Beaumont Port Arthur – multiple facilities
  - ▶ Geismar & Lake Charles – half a dozen facilities



- ◆ **ASPECT** – EPA monitoring airplane
  - Airborne Spectral Photometric Environmental Collection Technology



## How EJ is impacting industry (1 of 4)

- ▶ EJ initiatives are “in motion” across the country
- ▶ It provides community stakeholders a “voice,” a channel, and analytical data that can (and is) impacting facility owners & operators
- ▶ Facilities should recognize the need for:
  - ◆ Increased understanding of surrounding community
    - ▶ Demographics, neighboring sources, local impacts, data and tools
  - ◆ Increased community engagement can be required
- ▶ EJ is impacting:
  - ◆ Legislation, rules, policies
  - ◆ Permitting (construction & operation/renewals)
    - ▶ Approval timing, additional analyses, more stringent requirements
  - ◆ Compliance, enforcement
    - ▶ Monitoring, inspections

# How EJ is Impacting Industry (2 of 4)

## (Regulated Community)

- ▶ **Construction and Operation Authorizations** (new & existing permits, amendments, renewals)
- ▶ **CapEx Projects (potential delays, add'l cost, design changes):**
  - ◆ Public participation (engagement)
    - ▶ Public notice, comment, meetings, hearings
  - ◆ Impact assessment
    - ▶ Dispersion modeling, cumulative impact / health risk assessment, traffic...
  - ◆ Emission controls, operating procedures
  - ◆ Monitoring
  - ◆ Applicability for permitting, controls, offsets
- ▶ **Agency visits, inspections, monitoring** (fenceline, community, mobile, aerial, optical gas imaging, leak detection and repair)
  - ◆ EPA monitoring van (GMAP) & airplane (ASPECT) following Administrator Regan's "Journey for Justice" tour
- ▶ **Agency information collection requests (ICRs)**
- ▶ **Emission events**
  - ◆ Enforcement, fines, agency negotiation
- ▶ **Litigation**
- ▶ **M&A**
- ▶ Shareholder **ESG** considerations

# How EJ is Impacting Industry (3 of 4)

## (Regulated Community)

- ▶ Pause all operations
  - ◆ **Limetree Bay Refinery** - due to excess emission events (EPA emergency power)
- ▶ Temporary shut down
  - ◆ **Sterigenics, Ontario, CA** – result of elevated ethylene oxide SCAQMD community monitoring (4/2023)
- ▶ Air permit vacated or denied
  - **Formosa Plastics Plant** – Louisiana District Court (9/2022)
  - **Bluewater Texas Deepwater Port, Crude Export** – US EPA (9/2022)
  - **Metals recycling plant (RMG)**, Chicago – EPA pressure for health impact assessment / EJ analysis
  - **Mountain Valley Pipeline Compressor Station** - Virginia DEQ (12/2021)
  - **Atlantic Coast Pipeline**, Dominion & Duke Energy - US Court of Appeals (1/2020)
- ▶ Unannounced EPA Inspections & Posting On-site Sampling Results
  - ◆ **Denka** – EPA surprise visit & letter of concern to LDEQ/LDH related to **Denka & Formosa** (10/12/2022)
  - ◆ **Evonik** – EPA site inspection, airplane & mobile monitoring, information collection request (2022)

# How EJ is Impacting Industry (4 of 4)

## (Regulated Community)

- ▶ EPA/DOJ Suits and Settlements
  - **Evonik** – settlement over ethylene oxide impacts, St. John Parish, LA (4/2023)
  - **Denka / Dupont** – Attorney General civil action filed over chloroprene impacts (2/28/2023)
  - **Chevron Phillips Chemical Co** - settlement for Cedar Bayou, Port Arthur, and Sweeney
- ▶ Permit review revisit
  - **Kinder Morgan** terminal - Civil Rights Act
- ▶ Title V permit delays, revisits
  - **UOP LLC** – Mobile, AL – EPA denial to previously issued renewal/revision
  - **Suncor Refinery** – EPA objection to permit renewal
  - **Oxbow Calcining** - Title VI Civil Rights Act - EPA External Civil Rights Compliance Office (ECRCO)
  - **Municipal Waste Combustor** (Covanta Incinerator) Miami-Dade County – Earth Justice challenge
- ▶ FERC delay
  - **Texas & Rio Grande LNG Terminal** - D.C. Circuit requirement for EJ & Climate Analyses

# State EJ Examples (legislation, rules, policies)

## Colorado

- Disproportionately impacted (DI) communities:
  - Low income, minority, housing cost-burden, history of env. racism or cumulative health & environment impacts
- CO EnviroScreen & state modeling of EJ impacts

## Illinois

- Chicago citywide Cumulative Impacts Assessment
- EJ Start mapping tool, EJ community permitting reqmts
- Increased testing, operational/emission limits, monitoring systems, public participation

## Massachusetts – Climate Law

- Comprehensive Plan Approval (CPA) if w/in 1 to 5 miles of an EJ population
- Income vs state avg, minority population, English language proficiency ...
- Cumulative Impact Analysis (criteria pollutants & toxics)

## Louisiana

- Environmental Assessment Statement, “IT” Question
- Prop’d Senate Bill 35 - monitoring at ~450 plants

## New Jersey

- EJ Law & Rules, Overburden Communities, EJ Impact

## New Mexico (Albuquerque / Bernalillo County)

- Health, Environment and Equity Impacts Petition

## New York

- Disadvantaged Community list (1,700 census tracts)
- Climate Action Council - Draft Scoping Plan & Climate Justice priorities

## North Carolina

- Community mapping system

## Pennsylvania

- eMapPA mapping tool identifies EJ Areas:
  - Census tracts with 30% minority population or 20% low-income population or more

## Texas

- Public Involvement Plan (PIP) requirements (air, water, waste approvals)

## Rhode Island

- Green Justice Zone Act

## Virginia

- VA EJSCREEN+
- VA Environmental Justice Act (VEJA) defines two types of areas that qualify as EJ areas and how to identify
  - Communities of Color, Low-income Communities

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Significant differences in EJ definitions, terminology, tools to use, what triggers EJ actions, public engagement, how disparate impact is determined.

# Examples of Industry EJ Actions

## ▶ EJ Risk & Exposure Assessments:

- **Basic EJ reviews** for individual facilities
- **Sophisticated EJ tool** use to demonstrate **inapplicability of EJ** reqmts
- **Comprehensive EJ assessments**
- **Nation-wide EJ requirements database**
- **EJ Risk Benchmarking / Ranking** company-wide, nation-wide, industry peer comparisons
  - ◆ EJ indices, demographic indicators, publicly available compliance metrics
  - ◆ Compilation of Community Group/NGO/Interested Parties based on location and jurisdiction

## ▶ Project funding based on EJ metrics:

- **Applications for federal funding**
  - ◆ DOE Regional Clean H2Hubs, Carbon Capture Demonstration Projects, Carbon Capture FEED for CO2 Transport
- **Key elements:**
  - ◆ Community Benefits Plan
  - ◆ Quality Jobs Plan
  - ◆ Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan
  - ◆ Justice40 Initiative Plan Development Proposal
  - ◆ Community and Stakeholder Engagement Plan Development Proposal

## ▶ Permitting, Compliance, Public Data:

- **Permitting, certifications** – air, NEPA, FERC, Class VI UIC permits (CCUS)
- **EJ Data** - review, revise, update
- **Community Engagement**
- **EJ Impact Assessments** (e.g., health risk reviews)
- **EJ Monitoring** – to compare with community monitoring results

## ▶ ESG & Shareholder Drivers

- Petitions, requests, obligations requiring EJ assessments

## ▶ Review & Comment on Rule Development

## ▶ Internal EJ Awareness:

- Project Planning
- Environmental, Social
- Community, Gov't, & Public Relations



## Questions | Discussion