

A GUIDE TO ENVIRONMENTAL JUSTICE FOR CONSULTANTS: KEEPING UP WITH EVOLVING REGULATIONS AND CURRENT BEST PRACTICES

JUNE 2024



Mary Ann Grena Manley
Founder & President,
15E Communications LLC
magmanley@15ecomms.com
X (formerly Twitter): [@magmanley](https://twitter.com/magmanley)



Environmental justice has been a major priority for the Biden administration. During his first week in office, President Biden issued an executive order establishing the [Justice40 Initiative](#), which mandates that 40% of the benefits of certain agency programs go to environmental justice (EJ) communities. In addition to earmarking [billions of dollars for EJ communities](#), the executive branch has implemented an [ambitious enforcement and regulatory agenda](#) focused on tackling what it considers “[environmental injustice](#).”

“In addition to earmarking billions of dollars for EJ communities, the executive branch has **IMPLEMENTED AN AMBITIOUS ENFORCEMENT AND REGULATORY AGENDA.**”

For the first time, the Environmental Protection Agency (EPA) has incorporated EJ considerations into its most recent [National Enforcement Compliance Initiatives \(NECIs\)](#), which are priority areas where EPA intends to focus its enforcement and compliance resources. The [NECIs](#) for fiscal years 2024-2027 now explicitly state that “promoting environmental justice ... is a core element of all enforcement and compliance work.”

“One of those new priorities is to **PROTECT CHILDREN’S HEALTH**, especially in EJ communities.”

EPA’s Equity Action Plan

Federal agencies also use annual Equity Action Plans to strategize how their policies can advance equity and justice, including in EJ communities. In EPA’s [2023 update](#) to its [Equity Action Plan](#), the agency identified key priority strategies that embed EJ into its programs and policies. One of those new priorities is to protect children’s health, especially in EJ communities. Additionally, the plan highlights EPA’s enforcement and compliance accomplishments related to EJ, including an assessment of the agency’s legal authority to address cumulative impacts and the launch of the new [Office of Environmental Justice and External Civil Rights](#).

“...The plan highlights **EPA’S ENFORCEMENT AND COMPLIANCE ACCOMPLISHMENTS** related to EJ.”

The Equity Action Plan also notes, among other achievements, that EPA:

- exceeded its target to increase inspections at facilities that affect EJ communities, conducting 56% of its inspections in communities with EJ concerns;
- issued more than 133 orders since fiscal year 2021 addressing drinking water violations, particularly in EJ communities; and
- released an EJ toolkit for lead paint enforcement programs.

PFAS and Environmental Justice

Addressing per- and polyfluoroalkyl substances (PFAS) contamination is another part of EPA's comprehensive plan to promote environmental justice and protect impacted communities. In its [PFAS Strategic Roadmap](#), the agency noted that many sources of PFAS contamination are near low-income communities and communities of color. In prioritizing these populations, EPA said it would ensure they have "equitable access to solutions." Addressing PFAS exposure is also one of the six NEICs for 2024-2027.

“ Addressing per- and polyfluoroalkyl substances (PFAS) CONTAMINATION IS ANOTHER PART OF EPA'S COMPREHENSIVE PLAN. ”

As demonstrated by a flurry of final regulatory actions this spring, the agency continues to move swiftly on implementing its PFAS roadmap. On April 10, EPA [announced](#) the final national drinking water [standards](#) for six PFAS. The agency [simultaneously announced](#) that \$1 billion in funding is available to states and territories through the [Emerging Contaminants in Small or Disadvantaged Communities Grant Program](#) for initial testing and treatment at both public water systems and private wells. These funds are part of the \$9 billion Bipartisan Infrastructure Law allocation to help communities with drinking water impacted by PFAS and other emerging contaminants. This funding is available through EPA programs that are part of the Justice40 Initiative. The [final PFAS drinking water rule](#) was published April 26 (89 FR 325320).

Then, on April 19, EPA [finalized](#) its rule designating perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under the

“ These funds are part of the \$9 billion **BIPARTISAN INFRASTRUCTURE LAW...** to help communities with drinking water impacted by PFAS and other emerging contaminants. ”

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which the agency said will [increase transparency](#) and hold polluters liable for the cleanup of PFAS-contaminated hazardous waste sites. EPA published the [final rule May 8](#) (89 FR 39124), with a July 8, 2024 effective date.

“ On April 19, EPA finalized its rule designating PFOA and PFOS as **HAZARDOUS SUBSTANCES.** ”

Recent Legal Challenges to EPA Enforcement Efforts

Despite increased efforts to enforce its EJ policies, EPA has faced recent challenges. In May 2023, [Louisiana sued EPA](#) and the Department of Justice (DOJ) in response to a civil rights investigation considering whether state regulators violated civil rights by issuing air permits to chemical and plastics manufacturers in already heavily industrialized, Black-majority communities.

Title VI of the Civil Rights Act [prohibits](#) recipients of federal financial aid from intentionally discriminating on the basis of race, color, or national origin in their programs or activities. Under EPA's implementing regulations, EPA-funded agencies are prohibited from taking intentionally discriminatory actions (including permitting actions) and those that have a discriminatory effect. Louisiana claims that these [disparate impact regulations](#) exceed EPA and DOJ's statutory authority and that Louisiana agencies aren't required to conduct a cumulative impact analysis during air permitting.

Louisiana filed for a preliminary injunction in June 2023, and shortly after, EPA [dropped its investigations](#) without making a finding of discrimination. The [lawsuit continued](#), and in January 2024, a federal judge granted the preliminary injunction request, concluding that the disparate impact regulations are not explicitly authorized by the Civil Rights Act and therefore are likely unlawful. The court also invoked

the [major questions doctrine](#), which has been increasingly applied to reject agency interpretations of statutes on major political and economic questions. While this is not a decision on the merits, the ruling could have [significant ramifications](#) for the Biden administration's EJ initiatives.

Federal Policies Called into Question

EPA has now [backed down from other EJ cases](#) across the country, including a similar one in [Flint](#). These cases call EPA's enforcement policies into question, especially with EJ investigations pending in places like [Tennessee](#) (alleging that Tennessee violated Title VI by making a permit decision that disproportionately burdens Black communities in southwest Memphis) and [North Carolina](#) (alleging that NC violated Title VI by issuing permits to four hog operations that will have a disproportionate impact on Black and Latino communities).

State Environmental Justice Policies on the Rise

State lawmakers have also [taken steps](#) to address EJ concerns in their communities, establishing task forces and commissions to focus on issues in overburdened communities, developing EJ screening tools and other methods for collecting data, and enacting laws and regulations to address EJ issues.

In [New Jersey](#), the Department of Environmental Protection must evaluate the environmental and public health impacts of certain facilities, such as gas-fired power plants, wastewater treatment plants, and landfills, and deny a permit if a new facility would have a disproportionately negative impact on the surrounding community. Applicants proposing to locate these facilities in an overburdened community must prepare an EJ impact statement and directly engage with the community to receive their input and respond to any concerns. New Jersey's landmark regulations are the first of their kind and are already having [significant implications](#) for businesses and environmental consultants nationwide.

Other examples of EJ-specific laws among the states include:

- [Massachusetts](#) requires an environmental impact report if a project impacting air quality is located within 5 miles of an EJ population.
- [California](#) established a program intended to reduce exposure in those communities most impacted by air pollution.

- [New York](#) now requires environmental impact statements to determine whether the siting of a facility will cause or increase a disproportionate burden on disadvantaged communities.

Resources and Strategies for Consultants

It's important for consultants with clients working in EJ communities to be aware of the issues impacting these neighborhoods. Mapping tools like [EJScreen](#), the [Climate and Economic Justice Screening Tool](#), California's [CalEnviroScreen](#), and those in other states can help consultants identify facilities or projects in overburdened areas. EPA's recently launched [EJ Clearinghouse](#) website provides information and resources related to screening and mapping tools, available funding, and other EJ issues.

For many industries, EJ has become another compliance checkpoint. While industry is increasingly working toward understanding and meeting EJ requirements, the path to compliance can be complex, explained [Stephanie Deery](#), Vice President and Director of Air Quality Services at environmental and sustainability consulting firm Aeterra, LLC. Because each state — and sometimes local jurisdictions — has different, or even unspecified regulations, it can be difficult for companies to understand their obligations. Determining whether a facility is located in an EJ community is critical for compliance and aids in the diligence process for identifying sites that may be under increased scrutiny.

“While industry is increasingly working toward **UNDERSTANDING AND MEETING EJ REQUIREMENTS**, the path to compliance can be complex.”

STEPHANIE DEERY

VP & Director of Air Quality Services, Aeterra

There may also be budget considerations for projects or facilities located in EJ communities, said [Alan Rogney](#), environmental due diligence professional and Managing Director and Founder at Aeterra. He said permit renewals can materially affect a deal, noting that facilities bear the cost of compliance tools like increased air quality control devices. Knowing if a facility is in an EJ area is essential to understanding regulatory requirements, related costs, and overall community impact.

“Knowing how to **PRESENT DATA** and **GAIN THE PUBLIC’S TRUST** is key.”

Public Trust, Community Impact

Additionally, community support is needed to keep development projects on budget and on time, especially in EJ communities, said [Kendall Parrish](#), Environmental Justice Program Manager at Impact Environmental, an environmental consulting and services firm. While it can be difficult to get the community on the side of new development, Parrish said knowing how to present data and

gain the public’s trust is key. She noted how Impact Environmental adheres to a [community participation plan](#) and goes above and beyond in its [community presentations](#) for the [former DuPont facility](#) project in East Chicago, Indiana. Even though community engagement is a legal requirement in places like New Jersey, Parrish said it’s a best practice to operate this way across the board.

“Though community engagement is a **LEGAL REQUIREMENT** in [some] places... it’s a best practice to operate this way across the board.”

Best Practices Include Holistic Approach

Best practices in this area include adopting systematic approaches, maintaining accurate air emissions data, sustaining compliance management systems, and understanding broader impacts to the community and the environment overall, Deery said. “We try to take a holistic approach, especially on the diligence side,” Rogney added, explaining that all these considerations are rolled up into the ESG umbrella, a focus area for Aeterra. 🌱

Keeping up with EJ policies can be a challenge.
But keeping up with the best tools and technology isn’t — let ERIS help. >>



ONE-STOP SHOP FOR ENVIRONMENTAL PROPERTY DUE DILIGENCE

1-866-517-5204 | info@erisinfo.com | erisinfo.com