

Environmental Justice: A Year in Review

Introduction and Background

Environmental justice (EJ) remains at the forefront of the Biden administration’s whole-of-government approach to “advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹ Public awareness about environmental justice, equity, and inclusion continues to grow. EJ advocates are increasingly seeking change in how current and future energy projects are developed and for reductions in fossil fuel use. They are also asking for community investments, a voice in permitting decisions, and their involvement in federal/state regulatory and legislative processes. In addition, they are assertively calling for increased environmental enforcement in overburdened communities. Public power utilities should be aware of these developments and plan accordingly. The American Public Power Association (APPA) does not yet have an overall policy position on EJ but does have policies on several of the elements that are mentioned above as part of EJ advocates’ priorities.

Environmental justice is broadly defined by four principles: restorative justice, distributive justice, procedural justice, and recognition justice. However, there are many definitions of EJ. For example, the Environmental Protection Agency (EPA) defines EJ as “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.”² Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should “bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.”³ As defined by EPA, EJ has two components: (1) environmental equity (i.e., ensuring that environmental risks and harms are shared proportionally); and (2) community-based public engagement and consultation (i.e., ensuring that all people have an equal voice). The preferred nomenclature for communities affected by EJ issues has changed over time (e.g., frontline, disadvantaged, overburdened, underserved, minority, low-income, and communities of color), and EJ leaders continue to evaluate appropriate terminology.⁴

EJ communities are located throughout the United States. These communities most commonly share these attributes: they are minorities, low-income, tribal, or indigenous populations that potentially experience disproportionate environmental harms and risks. This can result from greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors.⁵

EPA has a responsibility under Presidential Executive Order (EO) 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” to consider the impacts of its regulatory actions on populations documented as frequently bearing the greatest burdens imposed by environmental pollution.⁶ Through EO 12898, the Biden administration has also established the Interagency Working Group on Environmental Justice (EJ IWG) to provide a forum for federal agencies to advance environmental justice principles collectively. The EJ IWG works with agencies to increase local community capacity to promote and implement innovative and comprehensive solutions to environmental justice issues.

1 Executive Order 13985, “On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (January 27, 2021) (EO 13985).

2 See EPA’s Environmental Justice Website (2024) <https://www.epa.gov/environmentaljustice>.

3 Id.

4 See, e.g., White House Env’t Justice Advisory Council, Draft Recommendations on: Justice40 Climate & Econ. Justice Screening Tool & Exec. Order 12898 Revisions 3 (May 2021).

5 See EPA’s EJ 2020 Glossary, <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

6 <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

Federal Actions to Advance Equity

Executive Orders: Environmental justice executive orders (EOs) issued by President Biden over the last several years are more specific and aggressive than those issued in prior administrations, and there has been more follow-through by the responding federal agencies. The Biden administration has elevated EJ concerns to “mitigate the negative societal and environmental impacts of climate change.” In 2023, President Biden issued two EOs related to environmental justice: EO 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” and EO 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All.” These EOs were built upon the administration’s 2021 EO 14008, “Tackling the Climate Crisis at Home and Abroad” and EO13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”⁷

EO 14091 directs federal agencies to ensure that the just treatment of all people is incorporated across all agency decision-making. Federal agencies have been directed to create equity action plans that will assess and include actions to address the barriers underserved communities may face in accessing and benefiting from agencies policies, programs, and activities. The EO calls for strengthening active engagement with communities, investing in underserved communities, improving economic opportunity in rural and urban communities, determining methods to advance the analysis of cumulative EJ impacts, identifying gaps in data and research related to EJ, and promoting data equity.

EO 14096 states it’s the duty of the executive branch agencies to pursue environmental justice. The EO reaffirms environmental justice is central to the implementation of civil rights and environmental laws. The EO directs federal agencies to consider measures to address and prevent disproportionate and adverse environmental and health impacts on communities, including the cumulative impacts of pollution and climate change. It directs agencies to actively facilitate meaningful public participation and just treatment of all people in agency decision-making. Federal agencies must identify and address gaps in science, data, and research related to environmental justice, to advance the analysis of cumulative impacts, and to make information on environmental and health concerns more publicly accessible. The EO launched a new Office of Environmental Justice within the White House Council on Environmental Quality (CEQ). Federal agencies are also charged with conducting new assessments of their environmental justice efforts and developing, implementing, and periodically updating an environmental justice strategic plan. Additionally, EO 14096 established a new EJ Subcommittee within the National Science and Technology Council, led by the Office of Science and Technology Policy, which is responsible for resolving gaps in EJ data and research.

Screening Tools and Guides: In 2023, several tools and guides were released to facilitate EJ analyses and data equity.

EPA’s EJScreen Tool, a mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic socioeconomic indicators, received an update. The most recent update included a redesign of the EJScreen reports, a new environmental indicator and related indexes on Toxics Releases to Air, and refreshed environmental/demographic data, as well as new health, critical service gap, and facility compliance data. EPA also released its Power Plant Environmental Justice Screening Methodology tool, which identifies and connects power plants to areas potentially exposed to air pollution from those plants and quantifies the relative potential for EJ concerns in those areas. EPA also released a draft revision of the Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJTG). The EJTG directs EPA analysts on how to evaluate the potential environmental justice concerns associated with EPA regulatory actions in an analytical fashion. The guidance provides directions on how to assess whether EJ concerns exist prior to the rulemaking and whether such concerns are exacerbated or mitigated for each regulatory option under consideration.

CEQ released a “how-to-guide” for federal agencies as they prepare environmental justice strategic plans per EO 14096. This guide seeks to provide transparency, consistency, and accountability by introducing a template for agencies to build tailored EJ plans. The template is the bulk of the guide, though there are planning tools also included in the package, and it is intended to serve as a consistent roadmap for agencies to follow. The guide also introduces specific performance measures to follow recommendations by the U.S. Government Accountability Office to assess, track, and measure progress in achieving each federal agencies environmental justice goals.

EPA released cumulative impacts guidance as an addendum to the revised Legal Tools to Advance Environmental Justice document. Regulators have historically been constrained in addressing the impacts of pollutants on communities where multiple sources that individually operate within regulatory limits have a deleterious impact in the aggregate. This addendum is EPA’s first legal guidance that analyzes how the agency may consider the collective impacts of contamination in a community. The guidance notes that EPA should take cumulative impacts into account during decision-making and take actions to avoid or mitigate such impacts.

⁷ EO14008.

EPA Administrator Michael Regan underscored EPA's commitment to "identifying and making appropriate use of every authority and tool available to the agency under the law to incorporate environmental and climate justice considerations." The Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and other federal laws are cited in the guidance as sources of authority. EPA also plans to use this authority to address cumulative impacts in setting standards, making permitting decisions, allocating funds, and overseeing state programs, among other things.

EPA is in the process of updating its Meaningful Involvement Policy. The policy update promotes an EPA-wide approach to meaningful involvement that can be tailored for program and regional needs. The policy outlines practices that agency staff can use as they design public outreach components of EPA's decisions and carefully consider public input. The policy can be used to plan for engagement activities as part of EPA actions, including proposed and final rules, and permitting, as well as the development of policy or significant guidance documents, creating strategic documents and strategic plans, and developing agency initiatives or programs (including financial assistance programs).

The U.S. Department of Justice's Office of Environmental Justice released its first Comprehensive Environmental Justice Enforcement Strategy Annual Report. It highlights DOJ's recent accomplishments in cases with environmental justice concerns and outlines the agency's strategy for engaging with and delivering results to overburdened communities. The report includes four guiding principles: 1) prioritizing cases that will reduce public health and environmental harms to overburdened communities; 2) making strategic use of all available legal tools to address environmental justice concerns; 3) ensuring meaningful engagement with impacted communities; and 4) promoting transparency regarding environmental justice enforcement efforts and their results.

What to Expect in 2024

APPA expects the administration and community groups to continue to focus on EJ in 2024, likely primarily focused on federal agencies' implementation of the administration's EJ goals. The Biden administration's executive orders have directed other federal agencies to prioritize EJ by dedicating staff to EJ and developing plans and metrics to assess progress. It remains to be seen if the Biden administration's instructions to coordinate across agencies will bring some cohesiveness or consistency to the various agencies' approaches to EJ.

APPA expects to see increased funding for EJ programs. EPA's Office of Environmental Justice and External Civil Rights announced \$2 billion in funding for Environmental and Climate Justice Community Change grants. The Community Change Grants also set aside \$200 million for technical assistance to grant applicants and recipients. The Department of Transportation plans to award \$1.5 billion in Rural Innovation Stronger Economy grants in 2024. Half the funds will go toward projects in rural areas and \$15 million will fund projects located in persistent poverty areas or historically disadvantaged communities.

The Biden administration has also signaled that it will increase enforcement actions against entities operating in EJ communities and contributing to pollution problems. EPA's National Enforcement and Compliance Initiative heavily features EJ. The administration will continue to focus on air toxics in overburdened communities, increased compliance of drinking water standards, and chemical accident risk reduction. Advocates and local communities will focus enforcement concerns on climate changes, coal ash contamination, and PFAS (per- and polyfluoroalkyl substances).

The revised and updated screening tools may lead environmental groups to challenge new or reissued permits, more governmental enforcement, and citizen lawsuits. The information contained in the screening tools may foster concerns about negative environmental effects caused by specific facilities located in EJ communities, raising the risk of permit challenges and environmental litigation.

Given all the federal activity related to environmental justice, APPA members should be mindful that investments in electricity infrastructure must be undertaken with a recognition of the impacts these projects have on surrounding communities and the workforce. The public power business model supports local decision making and is customer focused. The model allows for ongoing collaboration with EJ communities to understand better how public power utilities can support community needs, especially as they continue to reduce greenhouse gas and other emissions from energy generation through advancing low- and non-emitting technologies.

The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 49 million people that public power utilities serve and the 96,000 people they employ.