

Environmental Justice: An 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 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 EO 13985, “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. 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.

Resources and Policy Initiatives: In 2024, several resources have become available to facilitate EJ analyses and data equity. EPA published its Environmental Justice Clearinghouse, a public, internet-based, whole-of-government clearinghouse composed of culturally and linguistically appropriate and accessible materials related to EJ. The clearinghouse is meant to provide the public access to federal and non-federal resources online, including 1) information describing the activities of the members of the Interagency Council to address issues relating to EJ; 2) technical assistance information, tools, and resources to assist communities to build capacity for public participation; 3) copies of training materials developed by the Interagency Council or its members to help individuals and employees understand and carry out environmental justice activities; and 4) any other information deemed appropriate by the Administrator, in coordination with the Interagency Council.

Per EO 14091, federal agencies have prepared and submitted equity action plans (EAP). EPA and the Department of Energy (DOE) released their 2023 EAP, outlining the progress each agency has made advancing equity in their respective programs and in incorporating an evidence-based approach to equitable policymaking and implementation. DOE’s EAP highlights the top five new priority strategies to advance equity. They include 1) establishing a DOE-wide community benefits plan framework; 2) updating the merit review program to facilitate equitable outcomes; 3) increasing access to procurement opportunities for new entrants and disadvantaged businesses; 4) integrating environmental justice considerations into R&D programs; and 5) developing an agency-wide framework to work with Tribal and disadvantaged communities. EPA’s 2023 EAP identified eight priority strategies, which include four previously identified priorities carried forward from the 2022 EAP and four newly identified strategies to support communities, including 1) improving access for communities to federal assistance; 2) reducing cumulative impacts and health disparities; 3) strengthening the civil rights compliance program; 4) protecting children from exposures to environmental harms; 5) addressing inequitable access to resources for rural communities; 6) ensuring public access to EPA programs and addressing environmental

⁷ EO 14008. 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.

harms for people with disabilities; 7) strengthening community-based participatory science to achieve environmental equity; and 8) improving data and analytic capacity to better identify and remove barriers.

EPA's Office of Environmental Justice & External Civil Rights (OEJECR) released its draft national program guide (NPG) for the fiscal year 2025–2026, for which it sought comment. OEJECR's NPG highlighted three main objectives, including 1) advancing EJ priorities outside of EPA through support to communities; 2) advancing EJ and civil rights within the agency itself; and 3) strengthening OEJECR's ability to enforce federal civil rights law, as well as numerous specific OEJECR-specific "activities" and national- and regional-level "activities" to accomplish the larger objectives. This NPG may provide insight into how the agency plans to better incorporate EJ in its actions.

EPA is still in the process of updating its meaningful involvement policy. The policy update promotes an EPA-wide approach to meaningful involvement that can be tailored to program and regional needs. The policy outlines practices that agency staff can use to 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).

EPA released the Strategic Civil Criminal Enforcement Policy, which became effective immediately, seeking to strengthen the strategic partnership between civil and criminal enforcement.⁸ EPA's new policy seeks to provide agency enforcement personnel with clearer guidelines regarding using their various enforcement tools. The policy mandates four measures to increase coordination between its civil and criminal enforcement programs. It requires the development and implementation of national and regional priorities (e.g., National Enforcement and Compliance Initiatives, the PFAS Roadmap, and the Lead Action Plan), enhanced case screening, improved case management, and updated training. Additionally, the policy introduces several changes to the enforcement process, which may help determine whether an enforcement case should be handled civilly or criminally. First, the policy lists specific factors that civil and criminal enforcement teams should consider in their assessment of cases. Second, the policy describes mechanisms for communication between the civil and criminal enforcement teams, requiring that civil and criminal enforcement managers meet at least monthly to discuss the "civil and criminal enforcement equities" in new and existing cases. Third, the policy establishes public timeframes for enforcement matters, stating that "the goal is to have clear direction in the first year about how the action will be handled so that most judicial cases, to the extent circumstances allow, will be filed, charged, or concluded within two to three years—and within 12 to 18 months for administrative matters."⁹

What to Expect Going Forward

APPA expects the administration and community groups to continue to focus on EJ, 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. For the first time, EPA is exercising its authority to ensure EPA funding recipients comply with Title VI of the Civil Rights Act of 1964; federally funded programs, activities, and institutions are prohibited from discriminating based on "race, color, or national origin."¹⁰ EPA suggested that those found to have violated the law may lose their federal funds or approvals.

⁸ See the April 17, 2024, memorandum from the Assistant Administrator for Enforcement and Compliance Assurance, Strategic Civil-Criminal Enforcement Policy, <https://www.epa.gov/system/files/documents/2024-04/strategic-civil-criminal-enforcement-policy-april-2024.pdf>.

⁹ Id at 6.

¹⁰ Title VI, 42 U.S.C. § 2000 et seq.

EPA opened an investigation into the state of Louisiana's disparate impact permitting practices. The state challenged EPA's disparate impact standard, which states that policies that cause disproportionate harm based on race, color, or national origin violate the Civil Rights Act, even when the alleged harm is unintentional. This standard allows EPA to argue that it is discriminatory for state agencies to permit facilities in communities of color overburdened by pollution, even if discriminatory intent cannot be discerned. However, the district court judge barred EPA and the Department of Justice from imposing disparate-impact-based requirements against the state of Louisiana or its state agencies in civil rights cases under Title VI.¹¹ Louisiana is continuing to push back against the agency, submitting a request to bar enforcement of civil rights rules against any entity in the state and vacate EPA and DOJ's Title VI disparate-impact rules entirely.

In states advancing their environmental justice initiatives, EPA continues its Title VI EJ-focused efforts. In Illinois, the agency entered an informational resolution agreement with the state environmental protection agency to resolve claims alleging that the Illinois EPA had engaged in racial and national origin discrimination in its permitting process. After an investigation, the state agreed to bolster its current EJ considerations during the permit review process and implement several other changes.

The administration will continue focusing on air toxics in overburdened communities, increased compliance with drinking water standards, and reduced chemical accident risk. Advocates and local communities will focus on enforcement concerns on climate change, coal ash contamination, and PFAS (per- and polyfluoroalkyl substances). These efforts have already been observed in relation to air quality concerns in Bernalillo County in Albuquerque, NM. A petition submitted by environmental advocates called for EPA to investigate cumulative environmental impacts on the county's lower-income communities of color. These permit-related challenges may signal more to come.

The revised and updated screening tools, such as EPA's EJScreen tool and Power Plant Environmental Justice Screening Methodology tool, 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.

¹¹ State of Louisiana v. U.S. Environmental Protection Agency, et al, No. 2:23-CV-00692 (W.D. La., Jan. 23, 2024).

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 54 million people that public power utilities serve and the 96,000 people they employ.