

Environmental Justice 2022

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EJ: A Focus for the Biden Administration



Presidential Documents

Executive Order 14008 of January 27, 2021

Tackling the Climate Crisis at Home and Abroad

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART I—PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY

Section 101. Policy. United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

SECURING ENVIRONMENTAL JUSTICE AND SPURRING ECONOMIC OPPORTUNITY

Sec. 219. Policy. To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and overburdened—into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas. Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.

ENVIRONMENTAL JUSTICE

JUSTICE40

A WHOLE-OF-GOVERNMENT INITIATIVE

“We’ll create good jobs for millions of Americans...and we’ll do it all to withstand the devastating effects of climate change and promote environmental justice.”

PRESIDENT JOE BIDEN, 2022 STATE OF THE UNION

What is the Justice40 Initiative?

For the first time in our nation’s history, the Federal Government has made it a goal that 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. President Biden made this historic commitment when he signed Executive Order 14008 within days of taking office.

What kinds of investments fall within the Justice40 Initiative? The categories of investment are: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure.

But what counts as benefitting disadvantaged communities can be in the eye of the beholder

CLIMATE IN CRISIS

Inflation Reduction Act puts \$60B focus on a Biden priority: environmental justice

The Democrats' legislation passed Friday includes money earmarked for grant programs, clean energy investments and dedicated funding for tribal communities.



Inside Climate News ✓
@insideclimate



Senate Democrats could be “overcounting” the funding for the Inflation Reduction Act’s environmental justice provisions by as much as \$12.5 billion, activists said in a new analysis. The bill is expected to clear the House mostly unaltered this week.



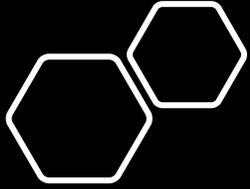
insideclimatenews.org

Inflation Reduction Act Commits Just \$47 Billion to Environmental Justice, Acti...
Senate Democrats could be “overcounting” the funding for environmental justice provisions in the Inflation Reduction Act and misrepresenting the bill’s benefits ...

1:10 PM · Aug 9, 2022 · TweetDeck

Justice 40

- **Justice40 Initiative Covered Programs List**
 - Corps restoration and flood / storm civil works
 - USDA & USFS Agricultural and forestry programs
 - Rural Utilities Service programs
 - Dept. of Energy research and power administrations
 - HHS assistance programs (LIHEAP, etc.)
 - Interior recreation, conservation, and Indian affairs programs
 - Dept. of Labor job programs
 - DOT Federal Highway Administration programs
 - **EPA grant and cleanup programs**



Screening Tool

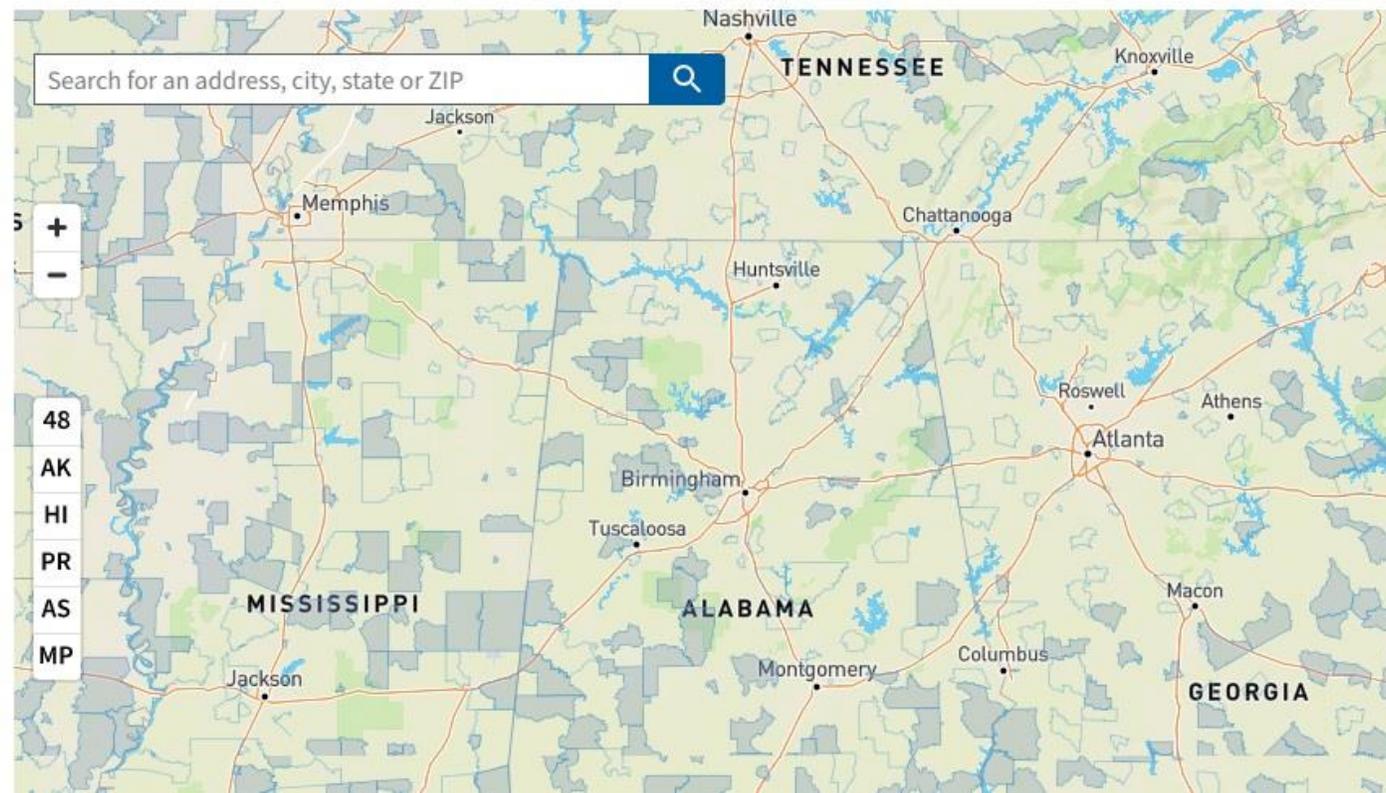
Climate & Economic Justice Screening Tool

- Guides federal agencies to improve consistency in administering programs and initiatives intended to benefit underserved communities
- Beta version published February 2022
- Public comments received
- Available at <https://screeningtool.geoplatform.gov/>

Explore the map

 **Public engagement**

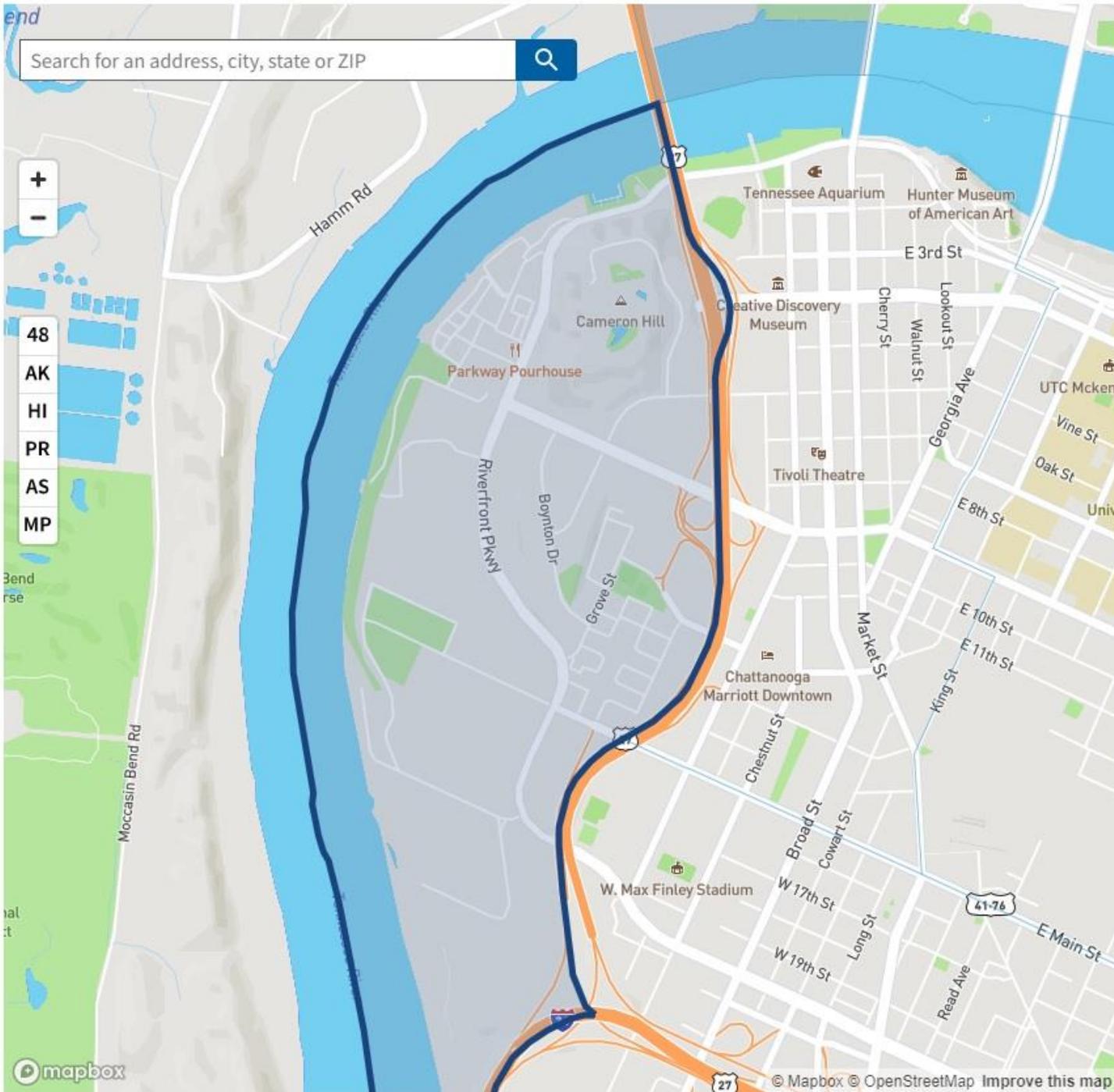
Use the map to see communities that are identified as disadvantaged. The map uses publicly-available, nationally-consistent datasets. Learn more about the methodology and datasets that were used to identify disadvantaged communities in the current version of the map on the [Methodology & data](#) page.



Things to know

This tool identifies communities that are marginalized, underserved, and overburdened by pollution. These communities are located in census tracts that are at or above the thresholds in one or more of eight categories of criteria.

Zoom in or search and select to see data about any census tract of



Search for an address, city, state or ZIP

- + / -
- 48
- AK
- HI
- PR
- AS
- MP

Census tract: 47065001600
County: Hamilton County
State: Tennessee
Population: 2,623

Identified as disadvantaged?
YES ●
 in 5 categories

[Send feedback](#) ✉

Climate change +

Clean energy and energy efficiency ● +

Clean transit ● +

Sustainable housing +

Legacy pollution ● -

At or above at least one threshold? Yes

Proximity to hazardous waste facilities 69th ↓
 below 90th percentile
 Count of hazardous waste facilities within 5 kilometers

Proximity to National Priorities List (NPL) sites 94th ↑
 above 90th percentile
 Proposed or listed NPL (Superfund) sites within 5 kilometers

6 Takeaways from the CEQ Climate and Economic Justice Screening Tool

March 30, 2022 | By [Rajat Shrestha](#), [Jillian Neuberger](#), [Sujata Rajpurohit](#) and [Devashree Saha](#)

Technical Perspective | *Topic* [Equity](#) | *Region* [North America](#)



1. Nearly 29% (93.5M people) identified as disadvantaged
2. Disadvantaged populations are concentrated, not spread evenly geographically
3. Rural areas are more likely to be disadvantaged
4. Including race would “acknowledge the central role of . . . racism in creating disparities between communities”
5. Significant variety of types of disadvantages faced across communities
6. Lack of forward-looking climate risk indicators may underestimate vulnerabilities due to climate change

White House Announces Environmental Justice Advisory Council Members

MARCH 29, 2021 • PRESS RELEASES

Today, the White House announced the members of the White House Environmental Justice Advisory Council. The advisory council will provide advice and recommendations to the Chair of the Council on Environmental Quality (CEQ) and the White House Environmental Justice Interagency Council on how to address current and historic environmental injustices, including recommendations for updating Executive Order 12898.

The White House Environmental Justice Advisory Council (WHEJAC) was established by President Biden's [Executive Order on Tackling the Climate Crisis at Home and Abroad](#) to fulfill his and Vice President Harris's commitment to confronting longstanding environmental injustices and to ensuring that historically marginalized and polluted, overburdened communities have greater input on federal policies and decisions.

New Advisory Council

New “Equity Plans” for 90 Agencies

For EPA:

1. Develop a comprehensive framework consider **cumulative impacts** in EPA decisions
2. Build the **capacity of underserved communities to provide their experience to EPA** - implement community-led projects
3. Develop EPA’s **internal capacity to engage underserved communities** - implement processes to act based on community input
4. Strengthen EPA’s external **civil rights compliance** program
5. Integrate **participatory (community) science** into EPA’s research and program implementation
 - “ ‘Community science’ is defined as research and science conducted by the community and/or a third party on its own behalf to inform decision-making”
6. More **equitable procurement and contracting**



Environmental Justice at EPA

Environmental Justice in Enforcement and Compliance Assurance

[Executive Order 13985](#) **EXIT** directed all federal agencies to advance racial equity and support for underserved communities. [Executive Order 14008](#) **EXIT** and EPA Administrator Michael Regan’s message to all EPA offices (entitled, “[Our Commitment to Environmental Justice](#)”) specifically called on EPA to strengthen enforcement to help advance the protection of overburdened communities disproportionately impacted by pollution.

EPA’s Office of Enforcement and Compliance Assurance (OECA) responded to that charge by issuing four memoranda directing enforcement staff to strengthen environmental justice considerations in the civil regulatory, criminal, and cleanup enforcement programs, and to use all available tools to do so:

- [Memorandum from Acting Assistant Administrator for Enforcement and Compliance Assurance Larry Starfield, “Strengthening \[Civil Regulatory\] Enforcement in Communities with Environmental Justice Concerns”](#) (pdf) (April 30, 2021)

Recent Enforcement and Compliance Assurance Activities Benefiting Overburdened and Vulnerable Communities

Increased Inspections in Communities with EJ Concerns

- As stated in the [Agency’s Strategic Plan for 2022-2026](#), EPA has set a goal to increase the percentage of inspections in areas of EJ concern. OECA will work to increase inspections in areas of EJ concern from the current level of about 30%, to 45% in fiscal year (FY) 2022, 50% in FYs 2023 and 2024, and 55% in FYs 2025 and 2026. OECA expects that more inspections in overburdened communities will help us to address the most serious threats to communities.



Greater Community Engagement

- To strengthen our collaboration on inspections, enforcement, and community engagement, EPA regional offices have entered into agreements with state agencies to jointly advance environmental justice principles. [EPA Region 9 and the California Environmental Protection Agency signed a five-year Memorandum of Understanding on Enforcement in Communities with Environmental Justice Concerns](#). Likewise, EPA Region 8 and the Colorado Department of Public Health and Environment entered into a [Memorandum of Understanding on Advancing Environmental Justice through Enforcement and Compliance Assurance Efforts in Disproportionately Impacted Communities](#).



Early Relief Secured by EPA Regions and HQ for Impacted Communities

- Where we found unsafe drinking water, we took early action to protect communities – for example:
 - [EPA issued an order under the federal Safe Drinking Water Act \(SDWA\) to the city of Benton Harbor, Michigan](#), to address lead violations and deficiencies found during a joint federal-state inspection of the water system.
 - [EPA issued an emergency SDWA order to require actions necessary to protect residents in Cahokia Heights, Illinois](#), from potential infiltration of harmful contaminants into the drinking water distribution system.
 - [EPA issued an emergency SDWA order to address lead contamination in drinking water in Clarksburg, West Virginia](#).
 - EPA issued emergency SDWA orders to protect tribal and non-tribal members from unsafe drinking water in Indian country, including:
 - [Residents in three mobile home parks in Thermal, California](#) and [residents of the Oasis mobile home park](#), all located the Torres Martinez Desert Cahuilla Indian Reservation.
 - [Communities on the Blackfoot Indian Reservation, the Wind River Reservation, and the Fort Belknap Indian Reservation](#).
- Where we found serious air pollution issues, we took early action to protect communities – for example:

Civil Rights Act Title VI and EPA

Title VI

1. Title VI prohibits recipients of federal financial assistance (e.g., states, universities, local governments) from discriminating on the basis of race, color, or national origin in their programs or activities.
2. Title VI is a federal law that applies to federal financial assistance recipients (i.e., persons or entities that receive EPA financial assistance) and not to EPA itself as the Executive Order does.
3. Title VI allows persons to file administrative complaints with the federal departments and agencies that provide financial assistance alleging discrimination based on race, color, or national origin by recipients of federal funds.
4. Under Title VI, EPA has a responsibility to ensure that its funds are not being used to subsidize discrimination based on race, color, or national origin. This prohibition against discrimination under Title VI has been a statutory mandate since 1964 and EPA has had Title VI regulations since 1973.
5. EPA's Office of Civil Rights is responsible for the Agency's administration of Title VI, including investigation of such complaints.

Possible Title VI Allegations

- Adequacy of state agency **public participation**
- Provision of adequate **information to community**
- **Siting** near an excessively disadvantaged or **burdened community**
 - *Note: Title VI applies to entities that receive **federal funds**.*
 - *Private right of action for alleging Title VI violations is limited to intentional discrimination.*

How EPA would approach an investigation of a recipient of federal funds under Title VI:

- Is there a **disparate impact** of the recipient's program on members of a group identified by race, color, or national origin?
 - **Adverse impacts:** Harmful health effects, odor, noise, lower property values, etc.
 - **Disproportionality** of adversity borne by an EJ community
 - **Causation** between the recipient's program and the disparate impact
- **Justification** if there is a disparate impact
- **Less discriminatory alternative** that may be comparably effective with less disparate impact

—EPA, *Interim EJ & Civil Rights in Permitting FAQs*, at 12-13 (Aug. 2022)

In a Title VI investigation, EPA considers “cumulative impacts”:

- ***total burden*** – *positive, neutral, or negative* – **from chemical and non-chemical stressors and their interactions that affect the health, wellbeing, and quality of life of an individual, community, or population at a given point in time or over a period of time.
 - direct health effects and indirect effects to people through impacts on resources and the environment that affect human health and well-being
 - Considers vulnerability or resilience of the community, i.e., ability to withstand or recover from the additional exposures under consideration**

—EPA, Interim EJ & Civil Rights in Permitting FAQs, at 13-14 (Aug. 2022)

What do if I have EJ issues?

According to EPA, if a screening tool indicates EJ issues—

- Do an EJ analysis
- Develop and execute a strategy to inform and engage local community
- Develop and execute a plan to mitigate any adverse disproportionate impacts
- Consider mitigation “outside the context of the permit, coordinating across agency programs, state agencies, community organizations, NGOs, etc.”

—EPA, Interim EJ & Civil Rights in Permitting FAQs, at 10-11 (Aug. 2022)

Permitting program suggestions

EPA has recommendations that call for—

- Continuous compliance monitoring equipment
- Enhanced compliance assurance provisions
- Public-facing compliance website
- Additional pollution controls & more stringent limits
- Make modeling assumptions enforceable
- Expand buffers or modify operational hours
- Use “non-environmental authorities” (public health authority monitoring, transportation air quality, etc.)
- Third party monitoring of citizen complaints
- “Community benefit agreements”

—EPA, Interim EJ & Civil Rights in Permitting FAQs, at 15-16 (Aug. 2022)

Community engagement

EPA has recommendations that call for—

- Non-discriminatory engagement practices
 - Race, income, disabilities, non-English speakers, etc.
- Description of community demographics
- Identify past and present civil rights concerns
- Plan for outreach and addressing community concerns
 - Develop with public input
- Various communications blocking and tackling
 - Points of contact, media contacts, meeting logistics, etc.

—EPA, Interim EJ & Civil Rights in Permitting FAQs, at 16-18 (Aug. 2022)

Questions???

Thanks!

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