



# Compendium of environmental justice policies and actions in the Biden Administration

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Since taking office, President Joe Biden has prioritized environmental justice to address the disproportionate health, environmental, and economic impacts of environmental harm borne by overburdened and underserved communities. The Environmental Protection Agency (EPA) defines environmental justice as the “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.”<sup>1</sup> The Biden Administration’s policies, including the EPA’s EJ strategy, focus on assisting EJ communities in building their capacity, engaging with federal agencies, incorporating the voices of communities into agency permitting, rulemaking and other decisions, and providing tools and resources for promoting the principles of environmental justice.

The following summarizes key actions on EJ initiatives in the first two years of the Biden Administration.

## Executive orders advancing environmental justice

On January 20, 2021, President Biden’s first day in office, he signed [the Executive Order 13985](#) directing federal agencies to assess whether underserved communities<sup>2</sup> and their members face systemic barriers in accessing benefits and opportunities.

EO 13985 provides access to federal resources to advance equity, civil rights, racial justice, and equal opportunity. The White House Domestic Policy Council (DPC) is expected to lead an interagency process in coordination with the directors of the National Security Council and the National Economic Council to advance equity for underserved communities by developing principles, policies and approaches across the federal government. Consistent with EO 13985, the Department of Justice (DOJ) may conduct general outreach to communities disproportionately impacted by industry and energy pollution regarding environmental justice concerns, including by participating in local, regional or national listening sessions. Several federal agencies for the first time will have dedicated staff or departments for environmental justice, including the Federal Energy Regulatory

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<sup>1</sup> Environmental Protection Agency website, Environmental Justice, available at <https://www.epa.gov/environmentaljustice>.

<sup>2</sup> Subsequent guidance is expected on EJ executive orders on several issues, including the appropriate terminology to address EJ communities. EO 14008 uses the phrase “disadvantaged communities” while some community members and advocates prefer the use of “overburdened and underserved communities,” and the EPA has used the phrase “communities with EJ concerns.” This appendix uses phrases to address EJ communities consistent with the references in the cited Executive Orders.



Commission's appointment of Montana Cole as Senior Counsel for Environmental Justice and Equity as well as the DOJ's [Office of Environmental Justice \(OEJ\)](#), led by department veteran Cynthia M. Ferguson, which will serve as a central hub to implement the DOJ's comprehensive environmental justice enforcement strategy.

Also on January 20, 2021, President Biden signed [Executive Order 13990](#), creating a federal policy to protect underserved communities from disproportionate environmental harm and to reduce greenhouse gas (GHG) emissions. EO 13990 created the Interagency Working Group on the Social Cost of Greenhouse Gases to assess the full costs of GHG emissions. An accompanying [White House fact sheet](#) directed the CEQ to rescind Trump era NEPA Guidance on GHGs and revise NEPA regulations consistent with EO 13990's policy (discussed further below).

On January 27, 2021, President Biden signed [Executive Order 14008](#), Tackling the Climate Crisis at Home and Abroad, to secure environmental justice and spur economic opportunity for disadvantaged communities. EO 14008 created the White House Environmental Justice Interagency Council (WHEJIC), the White House Environmental Justice Advisory Council (WHEJAC), introduced the Justice 40 initiative at the federal level, and directed the CEQ, EPA, DOJ, Secretary of Health and Human Services, and the Office of Science and Technology Policy to strengthen EJ enforcement in historically disadvantaged communities.

The WHEJAC is comprised of 25 local, geographically diverse environmental justice leaders from across the political spectrum appointed by the President. This Council is funded by the EPA and functions as an advisory body to the WHEJIC, which includes the most senior (often Senate approved) leadership from 18 departments, agencies and presidential policy councils. Collectively, the WHEJAC and WHEJIC have been developing a strategy to address current and historic environmental injustice. Critical to the councils' success is the development of recommendations for action ([published](#) by the WHEJAC in May 2021), clear performance metrics for accountability and annually publishing a public performance scorecard. In support of this work, in February 2022, the CEQ launched a beta version of its geospatial mapping tool, [Climate and Economic Justice Screening Tool \(CEJST\)](#), to identify disadvantaged communities disproportionately harmed by pollution. The CEQ is expected to annually publish interactive maps highlighting disadvantaged communities.

EO 14008 also required the Secretary of Health and Human Services to establish an [Office of Climate Change and Health Equity](#). That office was established on August 31, 2021, and prioritizes the identification of communities with disproportionate exposures to climate hazards and addressing health disparities exacerbated by climate impacts. The White House's Office of Science and Technology Policy is also expected to publish a report on climate strategies and technologies to improve air and water quality.

Finally, on September 12, 2022, President Biden signed [Executive Order 14082](#) to implement the energy and infrastructure provisions of the Inflation Reduction Act of 2022. EO 14082 prioritizes the advancement of EJ and economic opportunity, including through the Justice 40 initiative (described further below), for communities who are disproportionately harmed by exposure to industrial and energy pollution.

## Justice 40 initiative

The Justice 40 initiative is expected to create economic opportunities for historically disadvantaged communities by establishing a goal to direct 40 percent of the overall benefits from federal climate, clean energy, affordable and sustainable housing, clean water, and other investments towards disadvantaged communities. On July 20, 2021, the White House's Office of Management and Budget (OMB), CEQ, and the National Climate Advisor issued [the Interim Implementation Guidance for the Justice 40 initiative](#). The interim guidance provides a set of actions for agencies that manage covered programs, including identifying and determining how covered programs distribute benefits to disadvantaged communities as well as calculating and reporting progress on reaching the 40 percent goal of the initiative. Key definitions under the interim guidance include:

- **Covered program** – “a Federal Government program that makes covered investment benefits in one or more of seven areas.” These include climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure.
- **Community** – “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.” Federal agencies will rely on the CEQ's Climate and Economic Justice Screening Tool to identify disadvantaged communities.
- **Disadvantaged** – “Agencies should consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables, that may include, but are not limited to, the following:
  - Low income, high and/or persistent poverty
  - Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
  - Linguistic isolation
  - High unemployment and underemployment
  - High housing cost burden and substandard housing
  - Distressed neighborhoods
  - High transportation cost burden and/or low transportation access
  - Disproportionate environmental stressor burden and high cumulative impacts (EJSCREEN analysis)
  - Limited water and sanitation access and affordability
  - Disproportionate impacts from climate change
  - High energy cost burden and low energy access
  - Jobs lost through energy transition
  - Access to healthcare”

Several federal agencies have already released information about their covered programs – [Justice 40 Initiative Covered Programs List](#). This will facilitate the federal government's ability to ensure that many of the historic investments under the Inflation Reduction Act of 2022, [Bipartisan Infrastructure Law of 2021](#) and [the American Rescue Plan](#) directed toward EJ communities will achieve the Justice 40 initiative's goals.



## EPA and environmental justice

EPA's broad [Strategic Plan for 2022-2026](#) recognizes “Decisive Action to Advance Environmental Justice and Civil Rights” as one of the Agency’s central goals for the next four years. Achieving these Environmental Justice and Civil Rights goals will focus on the following objectives:

- Promoting environmental justice and civil rights at the federal, tribal, state and local levels
- Embedding environmental justice and civil rights into EPA’s programs, policies and activities
- Strengthening civil rights enforcement in communities with environmental justice concerns

In order to operationalize these goals, the EPA established the new [Office of Environmental Justice and External Civil Rights \(OEJECR\)](#) on September 24, 2022, to oversee the implementation of climate and EJ grant program created by [the Inflation Reduction Act of 2022](#), engage with disadvantaged communities and enforce federal civil rights laws. The OEJECR will be led by an Assistant Administrator, a position to be filled by a Senate confirmed nominee (yet to be named). The establishment of this office puts environmental justice and civil rights on par with other EPA environmental media focused offices, including air, water, land, chemicals and research.

EPA’s new OEJECR will also work to enforce federal civil rights laws, including Title VI of the Civil Rights Act, through which EPA aims to ensure that programs and activities receiving federal funding do not discriminate on the basis of race, color or national origin. Title VI enforcement is anticipated to increase in light of its [overlap](#) with enhanced environmental justice initiatives. For example, where EPA provides funding to state agencies to run public drinking water systems, the funding recipient is prohibited under Title VI from discriminating intentionally or as evidenced through discriminatory effect on the basis of race, color or national origin. The OEJECR will utilize EPA’s Conflict Prevention and Resolution Center (CPRC) to facilitate alternative dispute resolution for addressing Title VI complaints.

By September 30, 2023, the EPA is expected to develop and implement a cumulative impacts framework, issue guidance on external civil rights compliance, and establish at least 10 indicators to assess EPA’s performance in eliminating disparities in environmental and public health conditions. The EPA has also set an ambitious goal to detect noncompliance by increasing inspections in overburdened and underrepresented communities above the current level of roughly 30 percent of Agency inspections to 45 percent in fiscal year (FY) 2022, 50 percent in FYs 2023 and 2024 and 55 percent in FYs 2025 and 2026.

EO 14008 also directed EPA through its Office of Enforcement and Compliance Assurance (OECA) to strengthen the enforcement of environmental violations that have a disproportionate impact on underserved communities. In response, EPA’s OECA has issued four memoranda directing enforcement staff to bolster environmental justice considerations in the civil, criminal, and CERCLA/RCRA cleanup enforcement.

- April 30, 2021 Memorandum on [Strengthening \[Civil Regulatory\] Enforcement in Communities with Environmental Justice Concerns](#) seeks to increase the number of facility inspections in overburdened communities, resolve noncompliance with remedies with tangible benefits, and increase community engagement through use of EPA tools such as [EJSCREEN](#) and [Enforcement and Compliance History Online \(ECHO\)](#) compliance history data.
- June 21, 2021 Memorandum on [Strengthening Environmental Justice Through Criminal Enforcement](#) seeks to increase staff coordination and investigation to detect environmental crimes in overburdened communities. In addition, EPA will partner with the DOJ to create a first-of-its-kind [Environmental Crime Victims Assistance Program](#), which will help ensure that victims of federal environmental crimes are properly identified, that their rights are protected and that they receive services from the opening of an investigation through the prosecution of the case.
- July 1, 2021 Memorandum [Strengthening Environmental Justice Through Cleanup Enforcement Actions](#) seeks advance EJ goals through effective cleanup enforcement at [Comprehensive Environmental Response, Compensation and Liability Act \(CERCLA\)](#) and [Resource Conservation and Recovery Act \(RCRA\) cleanup sites](#).
- April 26, 2021 Memorandum [Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements](#) replaces a 2018 memoranda that restricted the scope of injunctive relief to compliance with applicable regulations or permits terms. The revised policy encourages enforcement staff to determine the most appropriate resolution for an enforcement matter, including the use of the following compliance tools where appropriate:
  - advanced monitoring
  - audits and third-party verification
  - electronic reporting
  - public access to compliance and monitoring data
  - consent decrees or other settlements providing for mitigation measures or SEPs and
  - stipulated remedies requiring the implementation of a specific project in the event of a future violation of the settlement agreement.

To further coordinate and provide guidance on the agency's multi-media enforcement approach, in May 2022, the EPA published a 206-page long compendium on [EPA Legal Tools to Advance Environmental Justice](#) which builds on [the Plan EJ 2014: Legal Tools Development](#) and identifies a broad range of EPA legal authorities to advance environmental justice and equity by federal agencies. The EPA has also issued a new online mapping tool [NEPAssist](#) and a [User Guide](#) to assist federal agencies in conducting environmental reviews under the National Environmental Policy Act (NEPA). The CEQ has selected NEPAssist as one of five pilot projects to improve the NEPA process.

On September 30, 2022, the EPA finalized its ["EJ Action Plan: Building Up Environmental Justice in EPA's Land Protection and Cleanup Programs,"](#) which is a key component of EPA's Office of Land and Emergency Management (OLEM)'s strategy for implementing EO 14008 and EO 13985. OLEM's EJ Plan will (1) strengthen compliance with EPA's existing plans for land protection and cleanup; (2) integrate environmental justice considerations into the regulatory development process; (3) improve community engagement and



extending technical assistance; and (4) implement the Justice 40 initiative by prioritizing benefits to underserved communities when making grant award decisions.

EPA's [FY 2022 Annual Environmental Enforcement Results report](#) was released on December 16, 2022, and highlights increased inspections, reductions in significant noncompliance in EJ communities (including under the Clean Water Act) and aggressive actions to target the most serious water, air, land and chemical violations that impact communities across the country. EPA outperformed and achieved 56 percent of on-site inspections in communities with EJ concerns. Its enforcement staff concluded approximately 1,650 civil judicial and administrative cases, with over 44 percent cases covering facilities in areas with potential EJ concerns. EPA also issued 86 drinking water orders in response to drinking water violations in overburdened communities, with 15 orders being issued to address emergency conditions. EPA's OECA also released the ECHO Notify, which provides weekly email notifications of changes to enforcement and compliance data in EPA's enforcement and compliance history online (ECHO) database. ECHO Notify is a new tool to inform citizens when environmental noncompliance may affect their community.

## **DOJ environmental justice enforcement**

On May 5 2022, the DOJ's Office of the Associate Attorney General and Environment and Natural Resources Division (ENRD), in coordination with EPA OECA, published an [Environmental Justice Enforcement Strategy](#). The strategy provides a roadmap for utilizing DOJ's civil and criminal enforcement capabilities to advance environmental justice in underserved communities. DOJ's ENRD, working in coordination with EPA, plans to (1) identify and prioritize cases that will result in significant reductions in environmental and public health harm in marginalized communities; (2) broaden strategic use of available legal tools to address environmental justice, including not only traditional environmental law enforcement avenues, but also actions under civil rights laws, worker safety and consumer protection statutes, and the False Claims Act; (3) increase outreach and engagement with environmental justice communities affected by environmental noncompliance or other disproportionate environmental impacts; and (4) develop publicly available tools through which communities with environmental justice concerns can easily access information about enforcement actions.

The enforcement strategy brings back the use of Supplemental Environmental Projects (SEPs) as a "legal tool" – abandoned by the DOJ during the Trump administration – and use of civil rights, worker safety, consumer protection, the False Claims Act and other available legal authority to prosecute violations adversely affecting the environment and public health.

The DOJ components responsible for EJ cases are expected to work with the EPA and other federal investigatory agencies to develop protocols for assessing environmental justice impacts during investigations. Each US Attorney is expected to designate an environmental justice coordinator within their office to identify areas of environmental justice concern within that jurisdiction. ENRD and OECA will continue to collaborate closely to ensure effective enforcement of our nation's environmental laws, including working to





effectuate timely and effective remedies of environmental violations or contamination that harms overburdened and underserved communities. DOJ components will also work with other federal agencies to develop procedures for improving information sharing, enhancing investigative capabilities, and coordinating on potential environmental justice enforcement actions.

## **CEQ's 2022 amendment of NEPA**

CEQ was directed under EO 13990 and EO 14008 to review and rescind revised NEPA regulations that were adopted under the Trump Administration. Accordingly, CEQ completed "Phase 1" of planned amendments to its NEPA regulations through an [April 20, 2022 final rule](#) that restored the requirement that federal agencies must assess "direct," "indirect" and "cumulative" effects of proposed actions. The final rule also eliminated amendments made under the Trump Administration that limited the scope of the alternatives analysis based on the "purpose and need" of the project. The revision clarifies that agencies have broad discretion to consider alternatives to the proposed action, removing the requirement that an agency base the "purpose and need" on the goals of an applicant and the agency's statutory authority. These changes are intended to, among other things, enhance federal agencies' obligation to work with overburdened and underserved communities to conduct a broad alternatives analysis and minimize environmental and public health costs associated with major federal actions.

On January 9, 2023, the CEQ issued [interim guidance](#) on analyzing GHG emissions and climate change effects of proposed federal actions that trigger the "hard look" requirements of NEPA. The guidance is effective immediately while CEQ accepts public comment until March 10, 2023. The interim guidance recognizes that "climate change raises environmental justice concerns because it will disproportionately and adversely affect human health and the environment in some communities, including communities of color, low-income communities. When assessing cumulative effects, agencies should also consider whether certain communities experience disproportionate cumulative effects, thereby raising environmental justice concerns." Accordingly, it instructs federal agencies to use the scoping process to identify potentially affected communities and provide early notice of opportunities for public engagement. Further, agencies should consider whether EJ communities experience disproportionate effects due to climate change or other impacts as part of their cumulative effects analysis.

The CEQ is also developing the Environmental Justice Scorecard (EJ Scorecard) for which it received feedback until November 3, 2022. Initially, the EJ Scorecard was intended to highlight activities by federal agencies to: (1) reduce harms and burdens borne disproportionately by EJ communities, (2) deliver investment benefits, and (3) undertake institutional reform to center community voices in decision making. The Scorecard will also measure progress toward other EJ goals, including the Justice 40 initiative.



## More information on EPA OECA's and DOJ ENRD's efforts to further EJ through enforcement and compliance assurance

- [EPA, Environmental Justice in Enforcement and Compliance Assurance](#)
- [DOJ, Office of Environmental Justice](#)

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