

# Workshop E: Impacts of EJ and ESG on Businesses

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11:15 AM – 12:30 PM

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[trinityconsultants.com](http://trinityconsultants.com)

# Environmental Justice (EJ) Goal

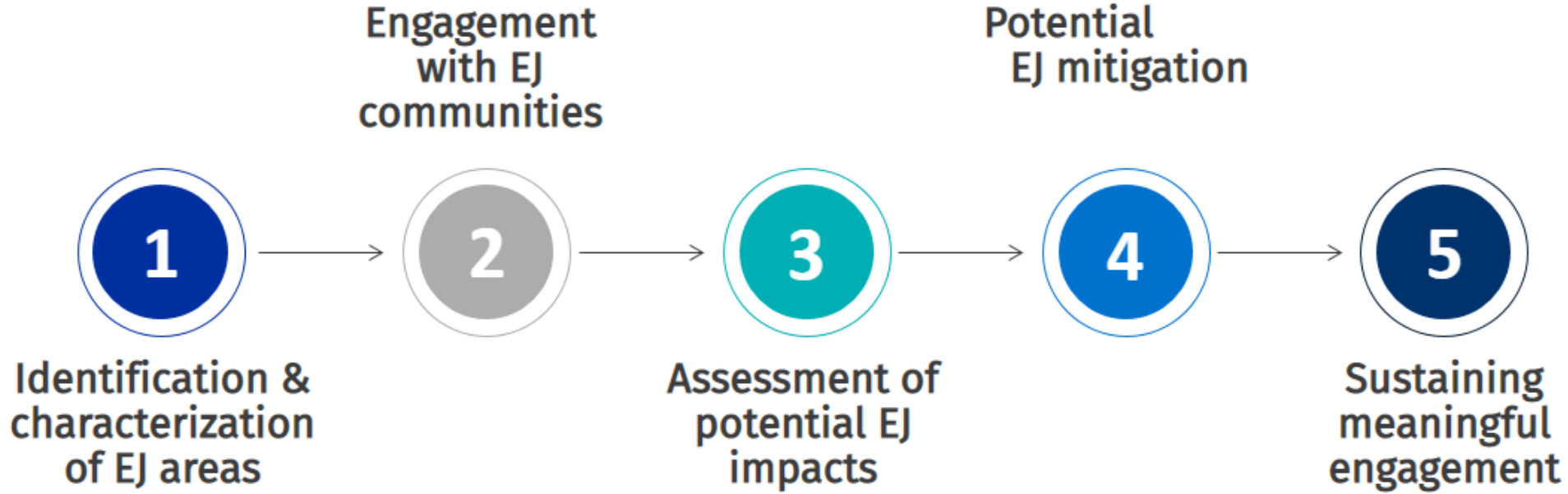
Assure new laws, rules, policies, public investments, and industrial, commercial, and municipal operations **do not cause disparate adverse environmental, health, or safety impact on disadvantaged, vulnerable communities**

- **minority, low-income**, indigenous, linguistically isolated, limited education, young, elderly
- overburdened, distressed communities
- climate exposed
- limited access to open spaces, water resources, playgrounds, outdoor recreational facilities



Two key components of EJ initiatives: fair treatment and meaningful involvement of EJ communities.

# Common Steps for Addressing EJ



These steps can be required for agency rulemaking, site M&A, permitting, compliance resolution, litigation response. For industrial sources, **Step 1 is most critical** (dictates applicability and potential level of detail required for the other steps)

# Range of EJ Screening Tools

## Analysis Tools / Data

- EJScreen
- Climate & Economic Justice Screening Tool (CEJST)
- CalEnviroScreen
- TRI Search Plus
- Risk Screening Environmental Indicators (RSEI)
  - EasyRSEI Dashboard
- AirToxScreen
- National Air Toxics Assessment (NATA)
- National Emissions Inventory (NEI)
- Enforcement and Compliance History Online (ECHO)
- ECHO Notify
- Census / American Community Survey (ACS) Data
- EPA Power Plants & Neighboring Communities Mapping Tool
- RAND Environmental Racism Tool
- EnviroMapper for EnviroFacts
- ArcGIS
- Talkwalker (social analytics, media monitoring)
- Ambient Monitoring, Next Gen monitoring, FLIR cameras
  - OLD MACT, Gasoline Distribution regs
- Cumulative / Health Risk Assessments
  - Dispersion Models
  - EPA Cumulative Risk Guide
  - EPA Human Health Risk Assessment Protocol (HHRAP)
  - EPA Hazardous Air Pollutant Exposure Model (HAPEM)
  - EPA 2003 Framework for Cumulative Risk Assessment (CRA)
  - California Hot Spots Analysis & Reporting Program (HARP)
  - BREEZE Risk Analyst

# How is EJ Impacting Industry? (1 of 2)

- ▶ EJ initiatives are “in motion” across the country
- ▶ It provides community stakeholders a “voice,” a channel, and analytical data that can (and is) impacting facility owners & operators
- ▶ Facilities should recognize the need for:
  - ◆ Increased understanding of surrounding community
    - ▶ Demographics, neighboring sources, local impacts, data and tools
  - ◆ Increased community engagement can be required
- ▶ EJ is impacting:
  - ◆ Legislation, rules, policies
  - ◆ Permitting (construction & operation/renewals)
    - ▶ Approval delays, additional analyses, more stringent requirements
  - ◆ Compliance, enforcement
    - ▶ Monitoring, inspections

# How is EJ Impacting Industry? (2 of 2)

- ▶ **Construction and Operation Authorizations** (New & Existing Permits, Amendments, Renewals)
- ▶ **CapEx Projects (potential delays, add'l cost, design changes):**
  - ◆ Public participation (engagement)
    - ▶ Public notice, comment, meetings, hearings
  - ◆ Impact assessment
    - ▶ Dispersion modeling, cumulative impact / health risk assessment, traffic...
  - ◆ Emission controls, operating procedures
  - ◆ Monitoring
  - ◆ Applicability for permitting, controls, offsets
- ▶ **Agency visits, inspections, monitoring** (fenceline, mobile, community, aerial)
  - ◆ EPA monitoring van (GMAP) & airplane (ASPECT) following Administrator Regan's "Journey for Justice" tour
- ▶ **Agency information collection requests** (ICRs)
- ▶ **Emission events**
  - ◆ Enforcement, fines, agency negotiation
- ▶ **Litigation**
- ▶ **M&A**
- ▶ Shareholder **ESG** considerations

# How can EJ impact me?

- ▶ **Legislation, Rule Development, & Policies**
- ▶ **Agency Procedures**
  - ◆ Tools & methodologies for identifying EJ communities
  - ◆ Public participation, community engagement
  - ◆ Impact assessment
  - ◆ Monitoring
  - ◆ Inspections & enforcement
- ▶ **Funding & Direction of Resources**
- ▶ **Litigation**
  - ◆ Title VI Civil Rights Act complaints, lawsuits



# Agencies with EJ Initiatives

- ▶ EPA / DOJ
- ▶ State / Local agencies
- ▶ NEPA
  - ◆ EPA
  - ◆ FERC
  - ◆ DOI
  - ◆ US Army Corps
  - ◆ MARAD, US Coast Guard
  - ◆ DOE
  - ◆ DOT
- ▶ Courts





# Federal EJ Initiatives Abbreviated Timeline

- ▶ **Feb 2023** – EPA announces \$550M in grants to reduce pollution in disadvantaged communities
- ▶ **Jan 2023** – EPA Legal Guidance on Identifying, Addressing Cumulative Impacts to Advance EJ, Equity
- ▶ **Dec 2022** - EPA's 8 Principals for addressing EJ in Air Permitting
- ▶ **Nov 2022** – EPA announces \$53M in grants for EJ community monitoring projects
- ▶ **Fall 2022** – EPA Responses to Civil Rights Act Title VI complaints for LDEQ, TCEQ ... (EPA audits, letters of concern)
- ▶ **Sep 2022** – CalEPA & EPA Region 9 EJ Enforcement MOU and EJ Enforcement Action Plan
- ▶ **Sept 2022** – Inflation Reduction Act includes **\$3 Billion** for EJ & Climate Justice
- ▶ **Aug 2022** - EPA Interim EJ and Civil Rights in Permitting FAQs
- ▶ **Spring/Summer 2022** – EPA & state monitoring and site visits Texas & Louisiana petrochemical facilities
- ▶ **May 26, 2022** – EPA Legal Tools to Advance Environmental Justice (206-page document)
- ▶ **May 23, 2022** – Biden-Harris Admin outlines EJ progress in report to Congress on implementing White House EJ Advisory Council (WHEJAC) recommendations
- ▶ **May 5, 2022** – DOJ and EPA launch comprehensive EJ Enforcement strategy and restore SEPs to help communities
- ▶ **May 5, 2022** – DOJ announces Office of Environmental Justice (OEJ)
- ▶ **Feb 2, 2022** – EPA Office of Inspector General - Refinery Benzene Fenceline Monitoring Investigation
  - Top EPA management challenges include integrating and leading EJ, including communicating risks.
- ▶ **Jan 22, 2022** - EPA hires addt'l criminal investigators
- ▶ **Nov 2021** – EPA Administrator Regan's "Journey for Justice Tour" (MS, LA, TX)
- ▶ **July 20, 2021** – White House Interim Implementation Guidance for the Justice40 Initiative
  - Goal of delivering 40% of overall benefits of relevant fed investments to disadvantaged communities
- ▶ **Jun 2, 2021** – EPA Administrator Regan FY 2022 Budget Request - **\$900 mil for EJ & Civil Rights**



# EJ and Civil Rights in Permitting

(EPA and DOJ influence on State Agencies)

Environmental Protection Agency

Interim  
Environmental Justice and Civil Rights in  
Permitting  
Frequently Asked Questions

## EPA Interim EJ and Civil Rights in Permitting FAQs - Aug 2022

1. Why is it important for permitting programs to ensure consideration of environmental justice and comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as well as state civil rights and environmental justice laws?
2. What are EPA's responsibilities under federal environmental justice policy, including with respect to permitting?
3. What responsibilities do EPA staff and managers with permit issuance and review responsibilities have to ensure compliance with civil rights laws by recipients of EPA financial assistance?
4. What is the relationship between EJ and civil rights compliance, particularly in the context of environmental permitting?
- 5. Does an entity's full compliance with the federal environmental laws in carrying out its permitting programs and decisions equate to compliance with the federal civil rights laws?**
6. How could a permitting decision raise a statutory civil rights compliance concern about intentional discrimination, or have a discriminatory effect?
7. In addition to federal civil rights laws, what other laws and regulations support consideration of environmental justice in permitting?
8. How can states and other recipients screen for EJ and civil rights concerns with respect to their permitting programs and decisions?

**9. If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?**

10. What are promising practices in conducting an EJ analysis?

**11. What is a disparate impact analysis under Title VI?**

**12. How would EPA consider "cumulative impacts" within the Title VI disparate impact analysis?**

**13. What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?**

**14. What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?**

15. When and how should permitting programs conduct community engagement?

16. How does tribal consultation differ from community engagement?

17. What are some resources on environmental justice, civil rights, and tribal consultation? How do I get additional information or provide feedback on the FAQs?



# EPA Interim EJ and Civil Rights in Permitting FAQs (1/5)

## FAQ #5

Does an entity's full compliance with the federal environmental laws in carrying out its permitting programs and decisions equate to compliance with the federal civil rights laws?

► EPA's answer – **No.**

Compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean compliance with federal civil rights laws.

Enforcement of federal civil rights laws and implementation of environmental laws are complementary. Used together, these laws help to ensure the non-discriminatory protection of human health and the environment.

# EPA Interim EJ and Civil Rights in Permitting FAQs (2/5)

## FAQ #9

If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?

### ► EPA's answer

- Conduct an appropriately scoped EJ analysis or disparate impact analysis as needed.
- Prevent or mitigate any adverse disproportionate impacts that would otherwise violate Title VI.
- To the extent mitigation included in the permit is not sufficient to address adverse and disproportionate impacts that would otherwise violate Title VI; consider implementing mitigation outside the context of the permit.

# EPA Interim EJ and Civil Rights in Permitting FAQs (3/5)

## FAQ #11

What is a disparate impact analysis under Title VI?

## FAQ #12

How would EPA consider “cumulative impacts” within the Title VI disparate impact analysis?

### ► EPA’s answer

- Adverse impacts: harmful health effects, odor, noise, decrease in property values, etc.
- Is a disproportionate share of the adversity borne based on race, color, or national origin (including LEP status)?
- Causal link between policy/practice and the disparate impact
- “Cumulative impacts” refers to the total burden from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time

# EPA Interim EJ and Civil Rights in Permitting FAQs (4/5)

## FAQ #13

What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?

► EPA's answer

Is there a comparably effective alternative decision or action that would result in less adverse impact?

**“If there are no mitigation measures the permitting authority can take ... denial of the permit may be the only way to avoid a Title VI violation.”**

# EPA Interim EJ and Civil Rights in Permitting FAQs (5/5)

## FAQ #14

What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?

► EPA's answer

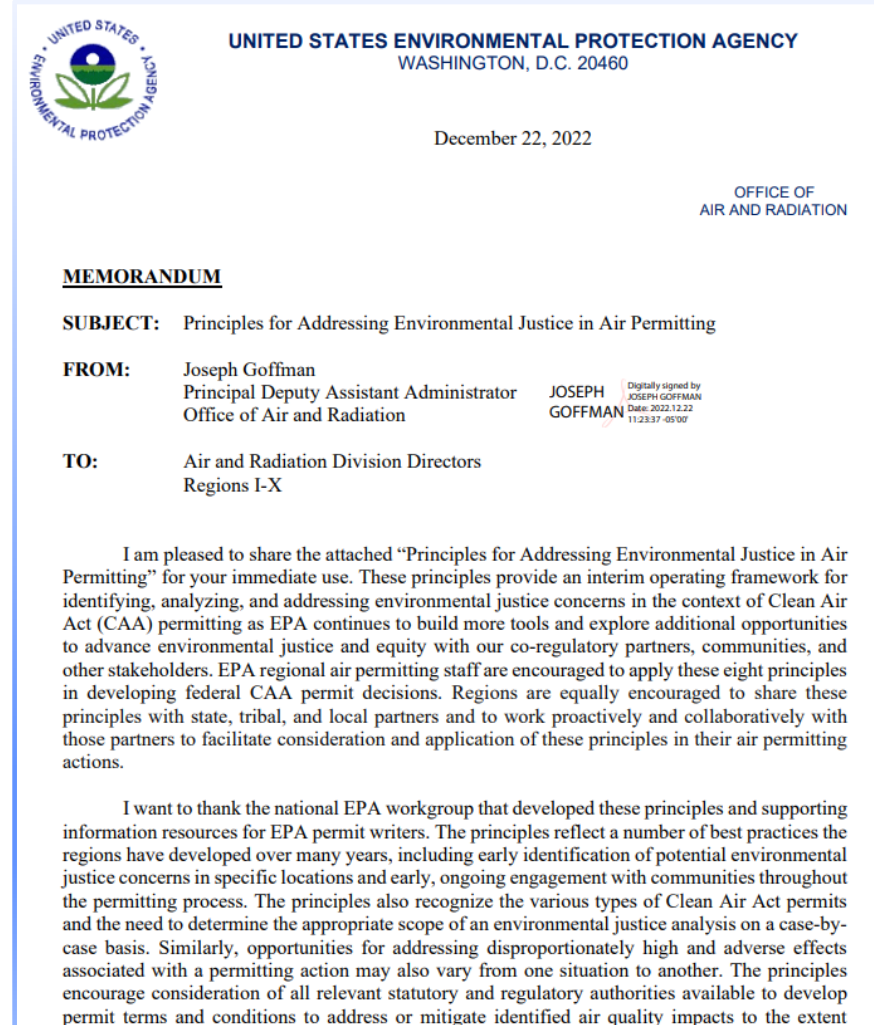
-Permit terms: More stringent limits, additional control devices, CEMS, etc.

-Use of non-environmental authorities: mobile health monitoring program, traffic plan to reduce diesel emissions, etc.

-Other potential commitments: Third-party monitoring of community complaints

# EPA's 8 Principles for Addressing EJ in Air Permitting (12/22/2022)

- ▶ Identify communities with potential environmental justice concerns
- ▶ Engage early in the permitting process to promote meaningful participation and treatment
- ▶ Enhance public involvement throughout the permitting process
- ▶ **Conduct a “fit for purpose” environmental justice analysis**
- ▶ Minimize and mitigate disproportionately high and adverse effects associated with the permit action
- ▶ Provide federal support throughout the air permitting process
- ▶ Enhance transparency throughout the air permitting process
- ▶ Build capacity to enhance the consideration of environmental justice in the air permitting process





# Conduct “fit for purpose” EJ Analysis (Principal #4)

- ✓ Further **evaluation of demographic data** indicating vulnerabilities in the affected population;
- ✓ Further **input from stakeholders**, including the affected community;
- ✓ An **evaluation of existing environmental data**, including air monitoring, air modeling, or, as appropriate, data from other media;
- ✓ An evaluation of the facility’s **compliance record**;
- ✓ An evaluation of **existing public health data** about the affected community;
- ✓ An evaluation of the permitting action’s **potential health and non-health adverse effects** (e.g., noise, odor, and traffic);
- ✓ An evaluation of the **cumulative impact** of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community;
- ✓ An evaluation of the **potential effects** of the permitting action under consideration **on the health** of a population and the **distribution of those effects** within the population; and
- ✓ An evaluation of potential methods for minimizing or **mitigating adverse effects** on the community.

# Considerations for Existing Operations

- ▶ Evaluate potential for EJ at existing operations
  - ◆ Surrounding demographics, neighboring sources, environmental indicators, EJ indexes
  - ◆ Historic commenters & your relationship with community & elected officials
  - ◆ Assess permitting and compliance exposure
  - ◆ Consider impacts of “normal” operations AND non-routine emissions events
- ▶ Understand and gain confidence in publicly disclosed data from a cumulative perspective
  - ◆ EIs, TRI, Tier II, DMRs, ACC, semiannual reports, etc.
    - Improve or correct excessively conservative or inaccurate release estimates
  - ◆ Regular multimedia audits, anticipate EJ-triggered inspections
- ▶ Include EJ evaluation in MOC decision-making, sustainability goals, corporate ESG
  - ◆ Reduce exposure, P2 opportunities, emissions mitigation to improve RSEI/AirToxScreen/NATA, regular review and update of EJ data

# Considerations for Projects

- ▶ Include EJ analysis early in siting suitability assessment
  - ◆ EJScreen and other tools
- ▶ Add into scope and schedule trackers EJ recommendations / risk mitigation
  - ◆ **Scope:**
    - Consider offsite impacts assessment and quantitative analysis to demonstrate no disproportionate impacts and/or identify solutions to impacts
    - Even if not explicitly required, consider modeling
  - ◆ **Schedule:**
    - Consider possible public comments, hearings, EPA influence
    - Consider effective community communication

# EJ Recommendations

For sites with higher EJ exposure or scores (nearby EJ communities, elevated EJ scores)

1. **Disciplined, deliberate approach for project planning, analysis & compliance procedures**
2. **EJ Mitigation**
  - ◆ Review, update, improve historical TRI and Annual Emission Inventory (EI) conservative, inconsistent, or inaccurate release estimates
  - ◆ Perform your own impact assessments (e.g., PM<sub>2.5</sub>, air toxics, health risk assessment)
    - ▶ Goal: more refined/accurate assessment than publicly available assessments
    - ▶ Consider options that may minimize (improve) modeled impacts
    - ▶ Consider collecting monitored data (e.g., fenceline, handheld sensors) to better understand limitations and compare to agency or community data
  - ◆ Evaluate P2 opportunities to reduce future RSEI & AirToxScreen scores
  - ◆ Conduct compliance audits and improve compliance programs to minimize enforcement risk of increased agency inspections
3. **Stakeholder Engagement** (internal & external)
  - ◆ Provide instructional training on EJ applicability, assessments, and risk reduction
  - ◆ Develop materials to improve communications & interactions with your community, regulators, elected officials, management, and shareholders

**Questions?**



# **Workshop E: Impacts of Environmental Justice (EJ) and Environment, Social, Governance (ESG) Requirements – The Road Ahead**

Presented by:

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Chicago, IL

## *What is Environmental Justice?*

Environmental Protection Agency's Environmental Justice Strategy, issued April 3, 1995.



**Goal** - “No segment of the population, regardless of race, color, national origin, or income, as a result of EPA’s policies, programs, and activities, suffers disproportionately from adverse human health or environmental effects, and all people live in clean, healthy and sustainable communities.”

## E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*

*“To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern.”*

-President Biden, January 27, 2021





## E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*

“[T]he Federal Government should pursue a comprehensive 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. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. .”

-President Biden, January 20, 2021



## ***What is Environmental Justice?***



The ***2004 OECA Toolkit for Assessing Potential Allegations of Environmental Injustice*** states:

Environmental Justice is the goal to be achieved for all communities so that:

- People of all races, colors and income levels are treated fairly with respect to the development and enforcement of protective environmental laws, regulations, and policies; and
- Potentially affected community residents are meaningfully involved in the decisions that will affect their environment and/or their health.”

## ***What is Environmental Justice?***

### **Administrator Regan's 8/29 Memorandum on EPA's Commitment to Environmental Justice**

- Environmental Justice is 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.
- Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

## *What is Environmental Justice?*



### **Commissioner Regan adds:**

- “To succeed, we must infuse ***equity*** and environmental justice principles and priorities into all EPA practices, policies, and programs.”
- “This will be one of my top priorities as Administrator.”

# *What is Environmental Justice?*

DW

## **FY 2022-2026 EPA Strategic Plan (March 2022)**

### **Goal 1: Tackle the Climate Crisis**

### **Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights**

- Objective 2.1 Promote EJ and Civil Rights at the Federal, Tribal, State, and Local Levels
- Objective 2.2 Embed EJ and Civil Rights into EPA's Programs, Policies and Activities
- Objective 2.3 Strengthen Civil Rights Enforcement in Communities with EJ Concerns

# Inflation Reduction Act Promotion of Environmental Justice

## Inflation Reduction Act (IRA) adopted August 16, 2022

- 105 programs across 11 agencies, including 25 at USEPA
- Intended to build on the Bipartisan Infrastructure Law, and the *Justice40 Initiative*
- Executive Order 13985, *Advancing Racial Equity And Support For Underserved Communities Through The Federal Government*, issued on January 20, 2021
- Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, issued on January 27, 2021,
- “Whole of Government Approach”

# Inflation Reduction Act Promotion of Environmental Justice

**Inflation Reduction Act (IRA) adopted August 16, 2022**

**Environmental and Climate Justice (ECJ) Program established by Section 60201 of the IRA**

- added a new section 138 to the CAA, 42 U.S.C. § 7434

**The ECJ Program will distribute **\$3 billion** in IRA funding through grants and technical assistance and climate justice activities to benefit disadvantaged communities.**

## Inflation Reduction Act Promotion of Environmental Justice

**Establishes the following programs/actions to advance EJ interests:**

- **Climate and Environmental Justice Block Grants** to support community-led projects in disadvantaged communities and address disproportionate environmental and public health harms related to pollution and climate change - **\$3 Billion** in funding.
- **Funding for fence-line monitoring near industrial facilities**, air quality sensors in disadvantaged communities, new and upgraded multipollutant monitoring sites, and monitoring and mitigation of methane and wood heater emissions. **\$117.5 million** in funding; also **\$50 Million** for Multipollutant Monitoring, **\$3 Million** for air quality sensors
- **Protecting our children with investments to monitor and reduce pollution at public schools** in disadvantaged communities. **\$50 Million**



## Inflation Reduction Act Promotion of Environmental Justice

### Establishes the following transit related programs/actions for EJ Communities:

- Addressing diesel emissions from goods movement facilities and speeding their adoption of clean heavy-duty vehicles, a key part of the Diesel Emissions Reduction Act.
- Cleaning up ports to reduce the pollution burden faced by fenceline communities, jump-starting the transition of ports to zero-emissions with funding for clean technology and emissions reduction plans.
- Creating **Neighborhood Access and Equity Grants** to support neighborhood equity, safety, and affordable transportation access. These grants will reconnect communities divided by existing infrastructure, mitigate negative impacts of transportation facilities or construction projects on communities, and support equitable transportation planning.

## Inflation Reduction Act Promotion of Environmental Justice

### Establishes the following clean energy programs/actions for EJ Communities:

- Encourage solar project development in communities with a 20% bonus credit for solar projects on federally-subsidized affordable housing projects and a 10% bonus credit for solar projects in low-income communities
- Enabling the U.S. Department of Housing and Urban Development to improve the climate resilience of affordable housing.
- Planting trees, establishing community and urban forests, and expanding green spaces in cities, which combats climate change, lowers energy bills and reduces heat-related death and illness.
- Expanding access to affordable, clean energy in Indian country with rebates on purchases of efficient electric appliances, and new investments in energy projects and infrastructure through DOE's Tribal Energy Loan Guarantee Program.

# Inflation Reduction Act Promotion of Environmental Justice

## Strengthens Resilience to Climate Change in EJ Communities:

- Boosting the resilience of Tribal and Native Hawaiian communities, landscapes, and fisheries from the impacts of climate change and severe drought.
- Creating a new Clean Energy and Sustainability Accelerator, which will seed state and local clean energy financing institutions, support the deployment of distributed zero-emission technologies like heat-pumps, community solar and EV charging, while prioritizing over 50% of its investments in disadvantaged communities.
- Creating a new grant program for Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing, which will help cover the cost when families need to replace energy appliances and equipment
- Expanding access to affordable, clean energy in Indian country with rebates on purchases of efficient electric appliances, and new investments in energy projects and infrastructure through DOE's Tribal Energy Loan Guarantee Program.

## Inflation Reduction Act Promotion of Environmental Justice

### Of the ECJ Program's **\$3 billion**:

- **\$2.8 billion** is available for grants for up to three years in duration to eligible entities for eligible activities, added a new section 138 to the CAA, 42 U.S.C. § 7434
- **\$200 million** is for technical assistance for grant recipients
- The entire **\$3 billion** must be obligated through grant awards or otherwise by September 30, 2026 and must be no longer than 3 years.

# Inflation Reduction Act Promotion of Environmental Justice

## Eligible Entities – who gets the money?

- A community-based nonprofit organization; or
- A partnership between a community-based nonprofit organization and an Indian tribe, local government, or an institution of higher education; or
- A partnership of community-based nonprofit organizations

## Inflation Reduction Act Promotion of Environmental Justice

### Eligible Activities – what activities can be funded with the money?

- **Community-led air and other pollution monitoring, prevention, and remediation;**
- **investments in low-and zero-emission and resilient technologies and related infrastructure and workforce development that help reduce GHG emissions and other air pollutants;**
- **Mitigating climate and health risks** from urban heat islands, extreme heat, wood heater emissions, and wildfire events;
- **Climate resiliency and adaptation;**
- **Reducing indoor toxics and indoor air pollution;**
- **Facilitating engagement of disadvantaged communities in State and Federal advisory groups, workshops, rulemakings, and other public processes**

# NEW SEC Regulations on Climate- Related Disclosures



# **NEW SEC Proposed Regulations on Climate-Related Disclosures**

**Proposed 3/1/2022**

**Applies to all Domestic and Foreign Registrants**

**Would Require Climate-Related Disclosures in Registration Statements and Periodic Reports**



# NEW SEC Proposed Regulations on Climate-Related Disclosures

Requires disclosure about:

- (1) **Governance of climate-related risks and risk management processes;**
- (2) **Likely material impacts of climate-related risks on the business and financials over the short-, medium-, or long-term;**
- (3) **How climate-related risks have or may affect the registrant's strategy, business model, and outlook; and**
- (4) **the impact of climate-related events (severe weather events and other natural conditions) and *transition activities* on the financials**



# **NEW SEC Regulations on Climate-Related Disclosures**

## **Existing Disclosure Obligations**

### **Regulation S-K**

### **Regulation S-X**

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations

### Regulation S-K

- Requirements applicable to the content of the non-financial statement portions of filings
- **Legal proceedings (Item 103)** - requirements for disclosure of environmental legal proceedings arising under any Federal, State, or local laws regulating the discharge of materials into the environment or for the purpose of protecting the environment.
- **Risk Factors (Item 105)** – material factors that make an investment speculative or risky.
- **MD&A (Item 303)** – provide material information relevant to an evaluation of cash flows
  - must focus on material events and uncertainties known to management

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations (Cont'd)

**Regulation S-X** – prescribes how registrants should disclose financial statements for SEC filings. Sets forth requirements for consolidated balance sheets, income statements, and cash flow statements, and notes to financial statements

# NEW SEC Regulations on Climate-Related Disclosures

## Existing SEC Disclosure Obligations

**SEC's 2010 Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106 and 34-61469, FR-82 (2/2/2010)**

**“Although much of this reporting is provided voluntarily, registrants should be aware that some of the information they may be reporting pursuant to these mechanisms also may be required to be disclosed in filings made with the Commission pursuant to existing disclosure requirements.”**

# NEW SEC Regulations on Climate-Related Disclosures

## Existing SEC Disclosure Obligations (Cont'd)

### Commission Guidance Regarding Disclosure Related to Climate Change

#### References ASC 410-30 regarding Environmental Obligations

- Paragraph 450-20-25-2 requires accrual of a liability if both of the following conditions are met:
  - Available information indicates that it is probable that an asset has been impaired or a liability has been incurred
  - The amount of the loss can be reasonably estimated.

# NEW SEC Regulations on Climate-Related Disclosures

## Existing SEC Disclosure Obligations (Cont'd)

## Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

### Highlights the following existing obligations:

- The Impact of Pending or Existing Climate Change-Related Legislation, Regulations and International Accords;
- The Indirect Consequences of regulation or business trends; and
- The Physical Impacts of Climate Change

# NEW SEC Regulations on Climate-Related Disclosures

## Existing SEC Disclosure Obligations (Cont'd)

### Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

#### Highlights the following existing obligations:

- must also disclose **“such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.”**



# NEW SEC Regulations on Climate-Related Disclosures

## Existing SEC Disclosure Obligations (Cont'd)

### Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

#### Target Issue: Corporate Social Responsibility (CSR) Report

- May contain more expansive disclosure than what is provided in the SEC filings.
- **“Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.”**

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations (Cont'd)

## Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

### Risk Factors:

- Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations
- Disclose material litigation risk related to climate change.

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations (Cont'd)

### Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

#### MD&A:

- Identify material pending or existing climate change-related legislation, regulations, and international accord and describe any material effect
- Material past and/or future capital expenditures for climate-related projects.
- Material indirect consequences of climate-related regulation or business trends.

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations (Cont'd)

### Sample Letter to Companies Regarding Climate Change Disclosures (issued 9/2021)

#### MD&A (cont'd):

- Material physical effects of climate change
- Quantify material increased compliance costs related to climate change
- Disclose material purchases or sales of carbon credits or offsets, and any material effects on your business

# **NEW SEC Regulations on Climate-Related Disclosures**

## **Existing Disclosure Obligations (Cont'd)**

**Non-SEC regulated companies do not escape obligations**

**Scope 3 emissions – regulated companies will require those up and down the supply chain to report their GHG emissions**

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Disclosure Obligations (Cont'd)

### Ex. Supplier Code of Conduct from Auto Manufacturer requires suppliers to:

- Report their Scope 1, 2, and 3 emissions and water usage data, if requested.
- Establish science-based GHG reduction targets, action plans, and transparent reporting mechanisms.

**Goal – “develop a joint roadmap with our suppliers on our journey towards carbon neutrality.”**

# NEW SEC Regulations on Climate-Related Disclosures

## Existing Voluntary Reporting Regimes

- TCFD – Task Force on Climate-Related Financial Disclosures – created by the FSB
- Climate Registry
- VRF – Value Reporting Foundation
- GRI – Global Reporting Initiative
- CDSB – Climate Disclosure Standards Board – created by the CDP
- IISB - the International Sustainability Standards Board created by the IFRS

# NEW SEC Proposed Regulations on Climate-Related Disclosures

## Proposed New Regulation Requires Disclosure About:

- (1) Governance of climate-related risks and risk management processes;**
- (2) Likely material impacts of climate-related risks on the business and financials over the short-, medium-, or long-term;**
- (3) How climate-related risks have or may affect the registrant's strategy, business model, and outlook; and**
- (4) the impact of climate-related events (severe weather events and other natural conditions) and *transition activities* on the financials**



# **NEW SEC Regulations on Climate-Related Disclosures**

**Modeled on the Taskforce on Climate-Related Financial Disclosures (TCFD) Framework and the Greenhouse Gas Protocol**

**Proposed rules would create a new subpart 1500 to Regulation S-K**

**Also would add a new Article 14 to Regulation S-X**

# NEW SEC Regulations on Climate-Related Disclosures

## Greenhouse Gas Protocol (GHG Protocol)

**Provides uniform methodology for measuring and reporting the seven greenhouse gasses covered by the Kyoto Protocol**

- carbon dioxide
- Methane
- nitrous oxide
- Hydrofluorocarbons
- Perfluorocarbons
- Sulfur hexafluoride
- nitrogen trifluoride

## SEC Disclosures

### Areas Covered include:

- Climate-related risks and their actual or likely material impacts on the registrant's business, strategy, and outlook;
- The registrant's governance of climate-related risks and relevant risk management processes;
- The registrant's greenhouse gas ("GHG") emissions, which, for accelerated and large accelerated filers and with respect to certain emissions, would be subject to assurance;
- Certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements; and
- Information about climate-related targets and goals, and transition plan, if any.

# NEW SEC Regulations on Climate-Related Disclosures

Proposal would require disclosure about the Registrants GHG emissions

- (1) Registrant's Scope 1 GHG Emissions - Direct Emissions**
- (2) Registrant's Scope 2 GHG Emissions - Emissions from generation of electricity used by the Company**
- (3) Potentially, Registrant's Scope 3 GHG Emissions - all other indirect emissions**
  - Includes emissions up and down the supply chain
  - Employee commuting or business travel

# NEW SEC Regulations on Climate-Related Disclosures

## Content of the Proposed Disclosures

- The oversight and governance of climate-related risks by the registrant's board and management;
- How any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements, which may manifest over the short-, medium-, or long-term;
- How any identified climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook;

# NEW SEC Regulations on Climate-Related Disclosures

## Content of the Proposed Disclosures (*cont'd*)

- The registrant's **processes** for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant's overall risk management system or processes;
- If the registrant has adopted a ***transition plan*** as part of its climate-related risk management strategy, a description of the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks;
- If the registrant uses ***scenario analysis*** to assess the resilience of its business strategy to climate-related risks, a description of the scenarios used, as well as the parameters, assumptions, analytical choices, and projected principal financial impacts;

# NEW SEC Regulations on Climate-Related Disclosures

## Content of the Proposed Disclosures (*cont'd*)

- If a registrant uses an ***internal carbon price***, information about the price and how it is set;
- The impact of ***climate-related events*** (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements;

# NEW SEC Regulations on Climate-Related Disclosures

## Content of the Proposed Disclosures (*cont'd*)

- The registrant's **direct GHG emissions (Scope 1)** and **indirect GHG emissions from purchased electricity** and other forms of energy (**Scope 2**), separately disclosed, expressed both by disaggregated constituent greenhouse gases and in the aggregate, and in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production);
- **Indirect emissions from upstream and downstream activities in a registrant's value chain (Scope 3)**, if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity; and



# NEW SEC Regulations on Climate-Related Disclosures

## Content of the Proposed Disclosures (*cont'd*)

### Information about any publicly set climate-related targets or goals, including:

- The scope of activities and emissions included in the target, the defined time horizon by which the target is intended to be achieved, and any interim targets;
- How the registrant intends to meet its climate-related targets or goals;
- Relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year; and
- If carbon offsets or renewable energy certificates (“RECs”) have been used as part of the registrant’s plan to achieve climate-related targets or goals, certain information about the carbon offsets or RECs, including the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs.

# NEW SEC Regulations on Climate-Related Disclosures

## Presentation and Attestation of the Proposed Disclosures

- Must include climate-related disclosure in registration statements and SEC reports, such as the 10-K;
- Provide the Regulation S-K mandated climate-related disclosure in a separate, appropriately captioned section of its registration statement or annual report;
- Provide the Regulation S-X mandated climate-related financial statement metrics and related disclosure in a note to its consolidated financial statements;

# NEW SEC Regulations on Climate-Related Disclosures

## Presentation and Attestation of the Proposed Disclosures (*cont'd*)

- Electronically tag both narrative and quantitative climate-related disclosures and provide in electronic format; and
- Provide the Regulation S-K mandated climate-related disclosure in a separate, appropriately captioned section of its registration statement or annual report;
- If an accelerated or large accelerated filer, obtain an attestation report from an ***independent attestation*** service provider covering, at a minimum, Scopes 1 and 2 emissions disclosure.

*QUESTIONS?*

## **Biographical Information**

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Mr. Kiani serves as a Senior Consultant in Trinity's Columbus, Ohio Office and is a P.E. in the State of Ohio. His experience includes Prevention of Significant Deterioration (PSD) permitting in Ohio and West Virginia, air dispersion modeling analysis, Maximum Achievable Control Technology (MACT) compliance assistance, New Source Performance Standards (NSPS), Title V compliance management, emission inventory development, Toxic Release Inventory Reports (TRIs), and digital solutions. He has helped clients in chemical manufacturing, petroleum refining, and general manufacturing sectors with air quality permitting and consulting services as well as implementation of digital solutions for utility industry. Mr. Kiani earned a B.S. degree in Civil Engineering from Babol University of Technology in Iran and an M.S. with honors in Environmental Engineering from the University of Kansas.

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Kevin Desharnais, an environmental litigator and counselor with over two decades of experience, advises clients on environmental matters covering all environmental media, including such areas as air and water permitting and enforcement, hazardous waste management, Superfund liability, and remediation of contaminated sites. He has represented clients in numerous federal and state court proceedings and administrative tribunals, defended clients against citizen enforcement suits, and negotiated resolutions of permitting and enforcement disputes with administrative agencies across the country.

Kevin also has broad experience advising clients regarding environmental due diligence and the allocation of environmental liabilities in corporate and real estate transactions. He also has extensive experience advising clients with regard to environmental due diligence in the development of renewable energy projects, including compliance with NEPA and state equivalent statutes, endangered species and migratory bird impacts, and wetland issues.