



PERSPECTIVES

The EPA's Office of Land and Emergency Management Environmental Justice Action Plan

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

The Environmental Protection Agency (EPA) Office of Land and Emergency Management (OLEM) oversees policy and guidance for the EPA's hazard response and waste programs.¹ In October 2022, OLEM released its Environmental Justice (EJ) Action Plan as part of its efforts to implement the White House's directives to federal agencies to proactively work toward environmental justice. Those directives, in the form of executive orders, are far reaching in scope, covering all federal agencies, establishing new offices, and creating new initiatives. With EPA's expansive push in the form of its EJ Action Plan, potentially impacted corporations and their counsel need to be aware of the recent changes including the specific EPA programs covered by the initiative.

BACKGROUND

In 2021, President Biden issued two executive orders that touch on environmental justice efforts by federal agencies. On his first day in office, Biden signed Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which recognizes that some policies of the federal government have historically overburdened certain individuals and communities in the realm of economic, environmental, and health impacts.² Specifically, Executive Order (EO) 13985 calls on federal agencies to recognize and work to overcome inequities in their policies and programs that serve as systemic barriers to equal opportunity.

Shortly thereafter, President Biden issued EO 14008 (Tackling the Climate Crisis at Home and Abroad), which lays out ambitious goals to respond to the climate crisis through domestic and foreign policy.³ EO 14008 builds on and amends EO 12898 of 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which directed federal agencies to identify and address disproportionate health and environmental effects of federal agency actions on minority

and low-income communities.⁴ EO 14008, in addition to the amendments to EO 12898 mentioned above, advises federal agencies to consider climate issues and establishes the White House Office of Domestic Climate Policy to coordinate the policy-making process among agencies.⁵

EO 14008 also announced the Justice40 Initiative, which mandates federal agencies to direct 40% of federal investments in climate, clean energy, clean transit, affordable and sustainable housing, workforce development, remediation of legacy pollution, and the development of clean water and wastewater infrastructure programs into disadvantaged communities.^{6,7} Expectedly, the EPA is one of the key agencies in this initiative. As of June 2022, the EPA has identified [73 programs](#) that are covered by the initiative, including those in the following list:

WATER

- [Categorical Grant: Beaches Protection](#)
- [Categorical Grant: Wetlands Program Development Grant](#)
- [Clean Water State Revolving Fund](#)
- [Clean Water State Revolving Fund-Emerging Contaminants](#)
- [Gulf Hypoxia Program](#)
- [National Estuary Program](#)
- [Nonpoint Source \(Section 319\) Grant Program](#)
- [Office of Water Geographic Programs](#)
- [Sewer Overflow Control Grants Program](#)
- [Technical Assistance for Treatment Works Program](#)
- [US-Mexico Border Water Infrastructure Program](#)
- [Water Infrastructure Finance and Innovation Act \(WIFIA\) Program](#)

DRINKING WATER

- [Alaska Native Villages](#)
- [Compliance Advisor Program](#)
- [Drinking Water Infrastructure Resiliency and Sustainability Grant Program](#)
- [Drinking Water State Revolving Fund](#)

¹ EPA, *About the Office of Land and Emergency Management*, (<https://www.epa.gov/aboutepa/about-office-land-and-emergency-management>).

² 86 FR 7009 (Jan. 20, 2021), available at <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

³ 86 FR 7619 (Jan. 27, 2021), available at <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁴ 59 FR 32 (Feb. 16, 1994), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

⁵ EO 14008 at § 202.

⁶ EO 14008 at § 223.

⁷ OFFICE OF MANAGEMENT AND BUDGET, *Interim Implementation Guidance for the Justice40 Initiative* (July 20, 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

- [Drinking Water State Revolving Fund Emerging Contaminants \(incl. PFAS\)](#)
- [Drinking Water State Revolving Fund Lead Service Lines Replacement](#)
- [Emerging Contaminants Grant Program](#)
- [Lead Testing in School and Child Care Grant Program](#)
- [Reduction of Lead in Drinking Water Grant Program](#)
- [Small and Disadvantaged Communities Drinking Water Grant Program](#)
- [Small System Training and Technical Assistance Grant](#)
- [Water Infrastructure Improvements for the Nation Small and Underserved Communities](#)

UNDERGROUND STORAGE TANKS

- [Leaking Underground Storage Tank \(LUST\)/Underground Storage Tank \(UST\)](#)
- [LUST Cooperative Agreements](#)
- [Multi- SEE- Leaking Underground Storage Tanks \(LUST\)](#)

SPILL PREVENTION CONTROL AND COUNTERMEASURE (SPCC)

- [Oil Spill Prevention and Preparedness](#)
- [Multi- SEE- Oil Spills \(OIL\)](#)

AIR

- [American Rescue Plan - Diesel Emissions Reduction Act \(DERA\) rebate program](#)
- [American Rescue Plan - Direct Awards to Air Agencies for Continuous Monitoring of PM2.5 and Other Common Air Pollutants](#)
- [American Rescue Plan - Enhanced Regional Capacity for Short-term Community Monitoring Needs](#)
- [American Rescue Plan - Grant Competition for Community Monitoring](#)
- [Categorical Grant: Tribal Air Quality Management Clean School Bus Program](#)
- [Diesel Emissions Reductions Act \(DERA\)](#)
- [Federal Support for Air Quality Management: \(American Indian Air Quality Training Program\)](#)
- [Ports Initiative EJ Small Grants](#)
- [Reduce Risks from Indoor Air](#)
- [Targeted Airshed Grants](#)

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

- [Recycling Education and Outreach Grants](#)
- [Solid Waste Infrastructure for Recycling Grants](#)

SUPERFUND/CONTAMINATION

- [Brownfields Projects Program](#)
- [Categorical Grant: Brownfields](#)
- [Multi-SEE- Superfund \(SF\)](#)
- [Office of Community Revitalization](#)
- [Superfund Emergency Response and Removal](#)
- [Superfund Remedial Program](#)
- [Toxics Release Inventory \(TRI\) / Community Right-to-Know Program](#)

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)

- [Categorical Grant: Pesticides Program Implementation](#)
- [Multi - SEE - Federal Insecticide, Fungicide and Rodenticide Act \(FIFRA\)](#)
- [Multi- SEE- Pesticide Registration Improvement Act \(PRIA\)](#)
- [Pesticides: Protect Human Health from Pesticide Risk](#)
- [Pesticides: Realize the Value of Pesticide Availability](#)

POLLUTION PREVENTION

- [Categorical Grant: Lead](#)
- [Categorical Grant: Pollution Prevention \(P2\)](#)
- [Lead Risk Reduction Program](#)
- [Pollution Prevention Grants](#)
- [Pollution Prevention \(P2\) Program](#)

GENERAL

- [Children and Other Sensitive Populations: Agency Coordination](#)
- [Compliance Monitoring \(On-Site Inspections\)](#)
- [Conflict Prevention and Resolution Center \(CPRC\)](#)
- [Environmental Education](#)
- [Environmental Information](#)
- [Environmental Justice Program](#)
- [Facilities Infrastructure and Operations \(clean energy and energy efficiency\) Buildings and Facilities \(BF\)](#)

- Facilities Infrastructure and Operations (climate)
- [Multi- Senior Environmental Employment \(SEE\) - Environmental Programs and Management \(EPM\)](#)
- [Multi- SEE- Inspector General \(IG\)](#)
- [Multi- SEE- Science and Technology \(ST\)](#)
- [Multi- SEE- State Tribal Assistance Grants \(STAG\)](#)
- State and Local Prevention and Preparedness
- [Tribal General Assistance Program](#)
- [US Mexico Border Program](#)⁸

OLEM'S ENVIRONMENTAL JUSTICE ACTION PLAN

OLEM designed its EJ Action Plan to guide implementation of these directives into its programs. After publishing the draft Action Plan in January 2022, OLEM solicited and incorporated feedback from state and local governments, government agencies, and the general public.⁹ The Action Plan's 36 objectives are categorized into four sections, each focusing on a distinct aspect of EJ concerns for the EPA. The four sections outline EPA's plans to:

1. Strengthen compliance with existing regulations;
2. Incorporate environmental justice concerns;
3. Improve community engagement; and
4. Comply with the Justice40 Initiative requirements.

The final EJ Action Plan will affect the EPA's administration of some of its largest and most impactful programs, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Superfund Program, Underground Storage Tanks, solid waste management, and oil pollution prevention.

EJScreen and Emerging Technologies

The Action Plan establishes goals for the EPA to promote the use of its existing analytical tools and to expand these technologies. The EPA recently released EJScreen, a publicly-available mapping tool that allows users to combine environmental and demographic data.¹⁰ EJScreen allows users, including community members, to see the proximity of a community to environmental hazards such as air pollution or hazardous waste. The EPA is continuing to incorporate additional data into this platform and has launched programs to educate EPA staff and community members about its potential uses.

The Action Plan also lays out a long-term objective for the EPA to utilize its Airborne Spectral Photometric Environmental Collection Technology (ASPECT) to characterize chemical pollutants in EJ communities. ASPECT currently consists of a single aircraft that is deployed over potential or known chemical releases such as refinery fires.¹¹ ASPECT's existing technology includes infrared scanners to image and identify the composition of chemical plumes and a gamma ray spectrometer to identify radiation.¹² The EPA plans to use this data collected over EJ communities to direct resources toward compliance enforcement.

Superfund

The EPA's Superfund program is uniquely ripe for EJ considerations—70% of Superfund sites are within one mile of low-income housing.¹³ In fact, the Superfund program has been on the ground floor of EJ initiatives for decades.¹⁴ Since the National Environmental Justice Advisory Council (NEJAC) was established in 1993 as an independent advisory committee to the EPA, it has provided analyses of the Superfund and other contamination cleanup projects.¹⁵

⁸ EPA, *Justice40 Initiative Covered Programs List for the Environmental Protection Agency* (June 24, 2022), available at <https://www.epa.gov/system/files/documents/2022-07/Justice40%20Initiative%20Covered%20Programs%20List%20for%20EPA.pdf>.

⁹ EPA OLEM, *EJ Action Plan*, (EPA 502/P-21/001) (Sept. 2022) at p. 4, available at https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan_9.2022_FINAL-508.pdf

¹⁰ EPA, *What is EJScreen?* (2022), available at <https://www.epa.gov/ejscreen/what-ejscreen>.

¹¹ EPA, *ASPECT* (2022), available at <https://www.epa.gov/emergency-response/aspect#past%20flights>

¹² EPA, *ASPECT Fact Sheet* (2021), available at <https://www.epa.gov/system/files/documents/2021-11/aspect-fact-sheet-2021.pdf>

¹³ Sylvia Carignan, *Majority of Superfund Sites Near Low-Income Housing*, BLOOMBERG LAW (May 8, 2017), available at <https://news.bloomberglaw.com/environment-and-energy/majority-of-superfund-sites-near-low-income-housing>

¹⁴ NEJAC, *Superfund Remediation and Redevelopment for Environmental Justice Communities* (May 2021), available at www.epa.gov/sites/default/files/2021-06/documents/superfund_remediation_and_redevelopment_for_environmental_justice_communities_may_2021_report.pdf

¹⁵ NEJAC at p. 17.

NEJAC issued its most recent Superfund report in May of 2021, and OLEM incorporated its recommendations into the EJ Action Plan.

OLEM identified ten aspects of the Superfund program in which to incorporate EJ. First, the EPA plans to incorporate more site-specific data to provide a better perspective of EJ factors in the initial screening and site assessment prioritization processes for Superfund sites.

OLEM set the goal to issue guidance in January 2023 to EPA Regional offices to incorporate community and EJ concerns as part of remedial and long-term removal action plans. OLEM also plans to develop tools over the next year to help Remedial Project Managers consider the implication of EJ factors throughout the Superfund process.

To increase the effectiveness of the Superfund program, OLEM set goals to enhance redevelopment efforts at Superfund sites by increasing collaboration with other EPA programs, state and local governments, and government agencies. OLEM will also continue researching and developing best practices for site reuse. Specifically, EPA and the Department of Housing and Urban Development will collaborate to identify HUD-assisted housing facilities located on Superfund sites and address exposure risks. The EPA has also provided special funding to four EPA Regions to address EJ considerations at Superfund sites with per- and polyfluoroalkyl substances (PFAS) contamination. This funding's contingency on EJ considerations is likely a precursor to how the EPA will direct its funding in the future.

The EJ Action Plan also lays out an objective for the EPA to strengthen its relationship with communities affected by hazardous contamination. The EPA's Office of Superfund Remediation and Technology Innovation (OSRTI) has developed a community workshop program designed to engage with communities early on and throughout the remediation process. These relationships will allow communities to have a hand in the decision-making process and proactively plan for redevelopment that will best serve the community.

Underground Storage Tanks (UST)

In 2021, the EPA fully rolled out its [UST Finder](#) project, where the public can locate any closed or active Underground

Storage Tank (UST) site or Leaking Underground Storage Tank (LUST) release in the US.¹⁶ UST Finder also allows users to compare UST and LUST locations to nearby water sources and weather data. Over the past year, the EPA's Office of Underground Storage Tanks (OUST) worked to identify all UST sites and LUST releases that are impacted by potential EJ concerns. In the future, OUST will incorporate EJScreen data directly into UST Finder so that stakeholders can better understand the impacts of storage tanks on disadvantaged communities. In the meantime, UST and LUST location data has been incorporated into EJScreen.

OUST is also launching a program to develop facility-specific compliance assistance for facility owners on tribal lands within the US. OUST acknowledges that UST facilities such as gas stations provide economic benefits and necessary resources to their communities, and targeted compliance assistance will reduce the risk of chemical leaks that would otherwise further burden these communities. Because the EPA has direct implementation authority in tribal lands, it is a natural choice for this type of pilot program that the EPA could expand in the future.¹⁷

Resource Conservation and Recovery Act (RCRA)

The Office of Resource Conservation and Recovery (ORCR) is currently working to map all RCRA Corrective Action cleanup sites and Treatment Storage and Disposal Facilities (TSDF)-permitted sites. The EPA will then analyze this data with EJ tools to identify potentially overburdened communities and areas that would benefit from additional funding.

The EJ Action Plan also encourages rule makers to consider EJ factors while finalizing the Coal Combustion Residual (CCR) federal permitting program and its legacy unit proposed rule. The Plan also asks EPA rule makers to add EJ priorities to the conditions required for states to receive RCRA hazardous waste grants.

In response to EO 14008, the ORCR established the RCRA Community of Practice for EJ, a network of professionals who want to incorporate EJ concerns into RCRA administration. This group hosts monthly forums for the EPA, states, and other interested parties to discuss the status and best practices of EJ in RCRA implementation.

¹⁶ EPA, UST Finder, available at <https://www.epa.gov/ust/ust-finder>

¹⁷ OLEM EJ Action Plan at p. 47.

Spill Prevention Control and Countermeasures (SPCC) and Federal Response Plans (FRP)

To introduce EJ into oil pollution prevention efforts, the Plan directs EPA staff to analyze historical SPCC and FRP compliance in EJ-impacted communities. The EPA will then use this data to potentially increase inspection and implementation activities in those communities. The EPA will also train on-scene coordinators (OSCs) on EJ issues, which will help the EPA's Emergency Response and Removal Program to better address EJ concerns.

CONCLUSION

Because the EPA considers EJ factors in permitting and enforcement decisions, regulated entities would be wise to consider the EPA's priorities when developing compliance programs. EJ impacts will continue to direct EPA's compliance focus, as well as funding, for many (perhaps most) cleanup programs. Owners and operators should incorporate environmental justice strategy into the overall corporate compliance efforts to reduce environmental impacts and lessen the risk presented by EPA's focus on EJ factors.

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