



Alabama Department of Environmental Management

ADEM Update

To

Manufacture Alabama

Alabama Chemistry Council (Sept 16, 2021)

&

Alabama Iron and Steel Council (Sept 17, 2021)



Alabama Department Of Environmental Management

Mission

Assure for all citizens of the State a safe,
healthful and productive environment.



Alabama Department of Environmental Management

Today's Topics

- EPA Initiatives
- Recent ADEM Activities
- ADEM Staffing and Work Practices



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EPA Initiatives

- Unwind previous administration agenda
 - Core Mission Focus [clean Air, Water, Land]
 - Regulations e.g. WOTUS, ACE
 - Budget cuts
 - Delegation to states
 - Streamlined NEPA
 - Co-benefits (double counting)
 - Stable standards – PM2.5, Ozone



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EPA Initiatives

- Social issues agenda – Environmental Justice
 - Underserved, disadvantaged, marginalized, overburdened
 - Treatment vs outcomes
 - Questionable science – social science
 - Enhanced enforcement



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EPA Initiatives

- Enhanced Enforcement Issues
 - Presumes lack of enforcement
 - Proximity to EJ areas is criteria
 - All industry in geographic area
 - Seeking criminal when possible
 - Possible unintended consequences



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EPA Initiatives

- Climate change
 - Administrator Climate Change background
 - Office of Climate Change
 - Return of CPP through budget
 - Reinstate 1970s NEPA, OMB Cost / Benefit



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EPA Initiatives

- EPA funding increase \$2 Billion = 22%:
 - EJ - \$290 M
 - Climate - \$325 M
 - Infrastructure - \$460 M
 - Superfund - \$300 M



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EPA Initiatives

- Greater Federal Control
 - States funding from 12.0% to 10.7% of total
 - New regulations & definitions e.g. WOTUS
 - Novel interpretations of regs & statutes
 - Increased Federal enforcement
 - Delay undesirable decisions



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EPA Methods to Effect Change

- Presidential Executive Orders
- Appointments – Administrator, AAs, RAs
- Drop pending rulemaking lawsuits
- New rulemaking
- Congressional Review Act
- Budget priorities



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ADEM Activities

- Rulemaking – CAFO, Biosolids, Solid Waste, CCR
- Enforcement –Biosolids, Waste Water, CCR
- Compliance vs Punishment
- Local Community outreach
- Maintaining acceptable funding



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ADEM Personnel

- No changes to Deputy Director or 5 Division Chiefs
- 6 Senior Managers 27 to 47 years w/ ADEM
- No known major retirements coming
- One Branch Chief change



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ADEM Personnel

- Continue to be at salary disadvantage
- New telework program conditionally implemented
- Continue retention strategies – promote within; work environment; intern / Co-op



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

April 30, 2021

MEMORANDUM

SUBJECT: Strengthening Enforcement in Communities with Environmental Justice Concerns

FROM: Lawrence E. Starfield
Acting Assistant Administrator

TO: Office of Enforcement and Compliance Assurance Office Directors and Deputies
Enforcement and Compliance Assurance Directors and Deputies
Regional Counsels and Deputies

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to “strengthen enforcement of violations of cornerstone environmental statutes” in communities overburdened by pollution.¹ This is consistent with Executive Order 14008.² During a recent Office of Enforcement and Compliance Assurance (OECA) overview briefing for the Administrator, I outlined a number of actions that were developed with your participation, that could strengthen enforcement and help advance the protection of communities, using existing resources. This memorandum sets out steps to advance these environmental justice (EJ) goals.³

Enforcement Program Goals to Advance Environmental Justice

- *Increase the number of facility inspections in overburdened communities.*

To effectuate this goal, we first plan to evaluate what types of programmatic inspections address the most serious threats to overburdened communities. We have begun to examine that issue with regard to national initiatives, and Regional input will be critical to this evaluation. We will then need to understand the number and nature of such inspections that have occurred in communities with EJ concerns, as evaluated and determined by the Regions in consultation with OECA. I have asked the

¹ [Administrator Michael Regan Message to EPA Employees on Commitment to Environmental Justice](#) (Apr. 7, 2021).

² Executive Order 14008 (Jan. 27, 2021), 86 Fed. Reg. 7619, calls upon EPA, to “strengthen enforcement of environmental violations with disproportionate impact on [overburdened] communities through the Office of Enforcement and Compliance Assurance” (section 222(b)).

³ This memo focuses on the civil regulatory enforcement program. Additional memos will be issued on the cleanup and criminal enforcement programs.

Office of Compliance to assist in this analysis. Once we have this information, we can set new inspection goals.

I recognize that we are currently constrained in our ability to conduct inspections due to the continuing COVID-19 health crisis. A top priority continues to be the safety of our employees, via compliance with the robust [*Interim COVID Health and Safety Guidelines for Field Activities*](#) (July 6, 2020) and the [*EPA COVID-19 Workplace Safety Plan*](#) (February 2021). When an inspection can be safely performed and failure to inspect a facility could threaten to impact the community's health (e.g., where health effects are reported in an overburdened community), then an inspection to assess the threat would be deemed mission critical and appropriate under Agency guidance.

We should also continue use of our offsite compliance monitoring tools, including facilities in EJ areas.

- *Strengthen enforcement in overburdened communities by resolving environmental noncompliance through remedies with tangible benefits for the community.*
 - *Prevent further pollution due to noncompliance, mitigate past impacts from pollution, and seek penalties for violations that impact overburdened communities.*
 - *Seek early and innovative relief, e.g., fence-line monitoring and transparency tools.*
 - *Incorporate Supplement Environmental Projects (SEPs) in settlements, where appropriate.*
 - *Assist and seek to obtain restitution for victims of environmental crimes.*

In addition to addressing ongoing noncompliance, a critical goal of the civil enforcement program is to obtain injunctive relief that remediates the pollution and addresses past harms to communities. I would challenge each of our case teams to think creatively, and use all available tools and settlement provisions, to craft settlement agreements that fulfill these goals. (See my memorandum of April 26, 2021, on [*Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements*](#).) State and local authorities, tools, and resources can also be very helpful in providing tangible benefits for the community. The Department of Justice is currently reviewing the prior Administration's rule limiting SEPs. If we are able to resume use of this settlement provision, which is so important to communities harmed by environmental violations, I would ask case teams to actively consider the use of SEPs in settlements with willing parties.

While our goal in all cases is to take prompt action to address pollution threats and impacts, we recognize it can take some time to resolve cases that include remedies that make a tangible difference for a community. Therefore, I am asking case teams to explore ideas for obtaining early relief for affected communities. This could include issuing administrative orders in judicial cases to expedite the implementation of pollution controls or the installation of monitoring equipment, seeking a preliminary injunction to stop noncompliance, or taking other interim measures.

- *Increase engagement with communities about enforcement cases that most directly impact them.*
 - *Provide more information to communities about facilities, pollution, and enforcement activities, through appropriate and available means such as press releases and public meetings.*

- *Empower communities by increasing awareness of enforcement program resources and make it easier for the public to search for EJSCREEN information and Enforcement and Compliance History Online (ECHO) compliance history data.*
- *Increase opportunities for community engagement in the development of cleanup and reuse agreements to ensure community concerns are addressed in a meaningful manner.*

Greater public access to compliance data can promote a community's ability to better understand and manage risks and monitor compliance at local facilities. Offices and Regions are encouraged to develop press releases that highlight the elements of an enforcement action that help a community. When additional resources become available, I welcome discussion on ways to increase our engagement with communities, either on a case-specific basis, through community/geographic initiatives, or other approaches.

EJ is a Shared Goal with Co-Regulators

Our work to protect communities with EJ concerns is a shared goal and responsibility of EPA and our partner agencies. We should continue to conduct joint planning with states and other co-regulators and, whenever possible, endeavor to perform our enforcement and compliance work in partnership with them. However, if there is a situation where a community's health may be impacted by noncompliance, and our co-regulator is not taking timely or appropriate action, we should not hesitate to step in and take necessary action. We need to ensure the protection of communities regardless of where a person lives.⁴

EJ in Enforcement Steering Committee

In order to more agilely guide our EJ work, I set up an Enforcement Steering Committee consisting of six senior managers from OECA Headquarters and the Regions. This small team will oversee our EJ work and will coordinate with the Office of Environmental Justice and other entities across the Agency, as appropriate.

Conclusion

With your help, we can make a difference in the lives of overburdened communities that are affected by environmental noncompliance. I appreciate your support in this vital effort.

cc: Acting Regional Administrators

⁴ To the extent that action in this scenario is inconsistent with guidance provided in [Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work](#) (July 11, 2019), then the direction in this memorandum controls.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

June 21, 2021

MEMORANDUM

SUBJECT: Strengthening Environmental Justice Through Criminal Enforcement

FROM: Lawrence E. Starfield
Acting Assistant Administrator

TO: Senior Managers and Special Agents, Office of Criminal Enforcement, Forensics
and Training

Regional Criminal Enforcement Counsels, Offices of Regional Counsel

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to “strengthen enforcement of violations of cornerstone environmental statutes” in communities overburdened by pollution.¹ This memorandum sets out steps to advance these environmental justice (EJ) goals via the criminal enforcement work performed by the Office of Enforcement and Compliance Assurance’s (OECA’s) Office of Criminal Enforcement, Forensics and Training (OCEFT) and the Regional Criminal Enforcement Counsels (RCECs), with technical assistance from their colleagues in other EPA offices.²

The criminal enforcement program can further environmental justice by strengthening tools for the detection of environmental crimes in overburdened communities, improving outreach to the victims of such crimes, and ensuring that our investigations are structured to provide maximum assistance to the Department of Justice (DOJ) in its exercise of prosecutorial discretion and pursuit of remedies that will guarantee adequate protection for those communities.

Strengthened Detection of Environmental Crimes in Overburdened Communities

Consistent with OECA’s policy on civil and criminal enforcement coordination,³ civil and criminal staff should maintain regular and open communications regarding increased facility inspections in overburdened communities.⁴ Effective civil-criminal coordination and case screening will ensure that

¹ [Administrator Michael S. Regan, Message to EPA Employees on Commitment to Environmental Justice](#) (Apr. 7, 2021).

² This memorandum complements the April 30, 2021, memorandum, [Strengthening Enforcement in Communities with Environmental Justice Concerns](#), setting out steps to advance EJ goals through civil regulatory enforcement. An additional memo will be issued on EJ considerations in the cleanup enforcement program.

³ See *Civil-Criminal Enforcement Coordination Policy* (Apr. 22, 2019).

⁴ Increased inspections are discussed in the April 30, 2021, memorandum. See footnote 2, above.

criminal case teams are apprised of violations involving potentially criminal conduct, increasing EPA's criminal investigative efforts in communities with EJ concerns.

OCEFT has used EPA's EJSCREEN mapping tool and other resources for over 20 years to identify the criminal investigations involving offenses that impact overburdened communities. To enhance EJ screening, case teams should use crime victim data and other relevant information to ensure the proper identification of individuals harmed by potential criminal violations in overburdened communities.

Cases with EJ concerns should be tracked in the OCEFT case management system, and the impact of pollution on vulnerable communities should be reviewed regularly to inform ongoing investigative resource investments.

Improving Outreach to Crime Victims

EPA has partnered with DOJ to improve attention and support to the victims of environmental crimes, creating the *Environmental Crime Victims Assistance Program*. These efforts have spotlighted the fact that many environmental crime victims live in communities with EJ concerns. Additional barriers to early identification and notification of crime victims exist in these communities, which may result in a delay of, or failure to access, services to which victims of crimes are legally entitled.

OCEFT has helped develop an Environmental Justice Workgroup comprised of staff from OCEFT, RCECs, EPA's Office of Environmental Justice (OEJ), and DOJ's Environment and Natural Resources Division, who are working to further integrate crime victim and environmental justice considerations into every environmental criminal investigation and prosecution. Workgroup members are updating the current OCEFT EJ directive to include the enhanced screening of relevant information on all criminal cases in communities with EJ concerns and the sharing of that information with the Regional EJ Coordinators.

The EJ Workgroup will conduct additional training for EPA and DOJ staff on the use of EPA's EJSCREEN mapping tool and the identification of crime victims. Training is also planned for OEJ and the Regional EJ Coordinators on the criminal enforcement process, and we will enhance the coordination between criminal investigators and regional EJ staff.

In addition, OCEFT is looking at creative ways to conduct direct outreach to potential crime victims in overburdened communities using a social media platform that can disseminate information relating to pollution, victims' services, and the status of criminal enforcement cases directly to the households harmed by alleged criminal conduct. This tool will enable criminal program staff to contact communities directly impacted by pollution and to share information and resources available to assist victims and the community.

Successful engagement with victims and communities will not only fulfill the requirements of federal crime victim statutes but also strengthen EPA's criminal enforcement outcomes by providing courts with first-person accounts describing the harms inflicted by environmental crimes.

Enhancing the Remedies Sought in Environmental Crime Cases

EPA's enforcement work is critical to protecting human health and the environment. It is important that our investigations are structured to ensure that prosecutions will generate remedies that yield meaningful

protection for communities and address the harm caused by criminal offenses. Working with our DOJ and other case team partners, we will strive to:

- Prevent subsequent pollution crimes in communities, which means that punishment for environmental crimes must be sufficient to achieve the goal of deterrence. EPA personnel should therefore investigate cases not only to determine and prove elements of the crimes' commission, but also to equip prosecutors to advocate for the appropriate application of federal Sentencing Guidelines.
- Seek conditions of probation or supervised release whenever necessary to ensure compliance and provide communities with sufficient information to be assured that illegal pollution is not recurring. Criminal enforcement case teams should therefore be prepared to urge prosecutors to seek sentences imposing advanced monitoring, audits and/or court-appointed monitors, and electronically and publicly reported compliance data, especially in corporate prosecutions involving ongoing businesses.⁵
- Seek restitution and/or community service to redress harm from the offense. These should be standard components of a criminal sentence where defendants have sufficient financial means. EPA's investigations should therefore include a full accounting of the gain or loss from the offense, along with the defendants' ability to pay restitution, fines, and fund community service projects to remediate harm.
 - OCEFT's EJ Workgroup should develop guidance for agency attorneys and prosecutors to ensure restitution, community service payments, and other court-ordered projects supporting overburdened communities are considered in all cases identified as having EJ concerns.
 - The EJ Workgroup has also been tasked to create a compendium of documents that attorneys can use as models when advocating for restitution and community service.

Conclusion

The actions described here will enhance efforts to detect potential offenses impacting vulnerable communities, improve the identification of and assistance to crime victims, and pursue case results that will provide communities with increased protection from illegal pollution and enhanced remedies for past harms. With your help, EPA can achieve these important results. I appreciate your support in this vital effort.

cc: Acting Regional Administrators
Enforcement and Compliance Assurance Division Directors and Deputies
Regional Counsels and Deputies
OECA Office Directors and Deputies
Regional EJ Coordinators

⁵ A more detailed discussion of such tools is contained in the April 26, 2021, memorandum, [Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements](#).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

July 1, 2021

MEMORANDUM

SUBJECT: Strengthening Environmental Justice Through Cleanup Enforcement Actions

FROM: Lawrence E. Starfield
Acting Assistant Administrator

TO: Office of Site Remediation Enforcement Managers
Regional Superfund Division Directors and Deputies
Regional Counsels and Deputies

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to “strengthen enforcement of violations of cornerstone environmental statutes” in communities overburdened by pollution.¹ This is consistent with Executive Order 14008.² This memorandum sets out steps to advance these environmental justice (EJ) goals through cleanup enforcement at private and federal facility sites, primarily through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).³

EPA uses mapping and screening tools, including EJSCREEN, in combination with local knowledge to help identify overburdened communities that may be disproportionately impacted by adverse health and environmental effects. The Agency uses its authority under CERCLA and RCRA to hold responsible parties accountable for releases or threatened releases of hazardous substances or wastes that impact communities and harm the environment.⁴ The cleanup and federal facilities enforcement programs can work within these statutes to protect overburdened communities by requiring responsible parties to take early and expedited cleanup actions, developing more robust enforcement instruments, ensuring the oversight of those enforcement instruments, and building trust and capacity through community engagement.

¹ [Administrator Michael Regan Message to EPA Employees on Commitment to Environmental Justice](#) (Apr. 7, 2021).

² Executive Order 14008 (Jan. 27, 2021), 86 Fed. Reg. 7619, calls upon EPA to “strengthen enforcement of environmental violations with disproportionate impact on [overburdened] communities through the Office of Enforcement and Compliance Assurance” (section 222(b)).

³ This memorandum complements the April 30, 2021, memorandum, [Strengthening Enforcement in Communities with Environmental Justice Concerns](#), and June 21, 2021, memorandum, [Strengthening Environmental Justice Through Criminal Enforcement](#), setting out steps to advance EJ goals through civil regulatory and criminal enforcement. This memorandum also reviewed recommendations made by the National Environmental Justice Advisory Committee pursuant to the Superfund Task Force. See [Superfund Remediation and Redevelopment for Environmental Justice Communities](#) (May 2021).

⁴ At federal facilities on the National Priorities List, EPA enters into federal facility agreements (FFAs) with other federal agencies to address releases or threatened releases of “hazardous substances” as well as “pollutants and contaminants.”

Require Responsible Parties to Take Early Cleanup Actions

Early cleanup actions to address the most urgent risks to human health can benefit overburdened communities with high levels of exposure to hazardous substances or wastes. For example, CERCLA Section 106(a) and RCRA Section 7003 authorize EPA to seek judicial action (e.g., an injunction) or take other action (e.g., issue a unilateral administrative order (UAO)) when it finds that an actual or threatened release of a hazardous substance or waste may present an imminent and substantial endangerment (ISE) to public health or welfare or the environment.

Actions

- Empower EPA regions to use CERCLA Section 106(a) and RCRA Section 7003 authorities, in conjunction with other regulatory programs, to proactively address potential releases.
- Prioritize early action and/or enforcement efforts on Superfund site operable units that most impact overburdened communities.
- Look for opportunities to issue orders for interim relief to address acute threats in conjunction with negotiating more comprehensive cleanup settlements.

Ensure Prompt Cleanup Actions by Responsible Parties

EPA can implement several procedures designed to expedite cleanups where overburdened communities are impacted.

Actions

- Continue to expedite remedial design/remedial action (RD/RA) negotiations, elevate the focus on completing negotiations within one year, and bifurcate RD and RA where needed to achieve this goal.⁵
- Require earlier involvement by the Office of Regional Counsel when potentially responsible parties (PRPs) request extensions of deadlines, miss deadlines, or are out of compliance.
- Utilize UAOs to compel PRPs to perform response actions and/or provide resources when negotiations fail or do not result in a timely settlement.
- Review PRP-lead sites designated as “human exposure not under control” (HENUC) to determine if enforcement actions can effectively reduce human exposure.
- Identify and resolve as quickly as practicable, within the FFAs’ dispute timeframes, disputes impacting cleanup work at federal facility National Priorities List (NPL) sites or operable units that are near or in communities with EJ concerns and focus resources on expediting the resolution of these disputes (e.g., Technical Facilitation and Tiered Partnering).
- Work with the Department of Justice to address situations where negotiation/cleanup delays are attributable to federal agencies by promptly elevating issues, expediting the consultation process, and enabling EPA to use all available mechanisms (including prompt issuance of CERCLA Section 106 orders to federal agencies).
- As appropriate, issue CERCLA Section 106 orders to private parties where cleanups are delayed.

⁵ See [2019 Remedial Design/Remedial Action: Process for Expediting Negotiations and PRP Cleanup Starts](#) (June 20, 2019); [Bifurcating Remedial Design and Remedial Action to Accelerate Remedial Design Starts at PRP-Lead Superfund Sites](#) (June 21, 2018).

More Robust Enforcement Instruments

Enforcement instruments can be enhanced to address issues that may arise during the cleanup process and that may adversely affect an already impacted community. These enhancements may help to lessen the cumulative public health effects on a community closely connected to a contaminated site or sites. Communities can also be empowered to participate in the enforcement process through the inclusion of publicly accessible monitoring and transparency tools in enforcement instruments.

Actions

- Engage, where appropriate, the community about cleanup implementation issues and include enforceable language in enforcement instruments to minimize adverse impacts to the community (e.g., monitoring truck traffic or dust).
- Consider inclusion of provisions in settlements or agreements that provide for the performance of a specified project in the event of noncompliance with the enforcement instrument.⁶
- Require the installation of advanced monitoring equipment where appropriate to demonstrate compliance with remedial action objectives and make such data publicly available.
- Require PRPs to publish and keep current a schedule of compliance obligations, including the schedule for institutional controls (ICs) implementation, so that the community can be kept apprised of and provide input on compliance.

Increased Oversight of Enforcement Instruments

While oversight of cleanup responses occurs in all enforcement cases, particular attention to timely compliance is needed when overburdened communities may be adversely impacted by noncompliance with an enforcement instrument.

Actions

- Conduct compliance reviews at sites in communities with EJ concerns to ensure that remedial requirements in consent decrees, federal facility agreements, and other enforcement instruments are being implemented consistent with the enforcement instrument's schedule, work, and quality expectations.
- Ensure that ICs are in place and are monitored for compliance on a regular basis and review ICs to determine if they are having the intended effect or if new ICs are needed.
- Evaluate whether remedy implementation is having unintended adverse impacts (e.g., noise, odor, traffic) on the neighboring community.

Build Trust and Capacity Through Community Engagement

Building trust and capacity in an impacted community, as well as increasing transparency, is critical for the effective implementation of a Superfund or RCRA remedy. To achieve this, EPA must engage the community in a proactive, transparent, and consistent manner throughout the cleanup and enforcement process.

⁶ Such provisions may be limited by current DOJ policies and a regulation (28 C.F.R. § 50.28(c)(1)) now under review at DOJ. EPA is coordinating closely with DOJ to address any such limitations.

Actions

- Communicate with affected communities using accessible and effective communication practices (e.g., those that consider the dominant language of the impacted community) about cleanup activities in their communities, including: site-specific information; the status of a PRP's compliance with schedules and legal obligations in relevant enforcement instruments, where appropriate; the types of available enforcement tools to promote cleanup and reuse of contaminated sites; and the benefits and results of enforcement work.
- Regularly update Superfund Site Cleanup Fact Sheets and other pertinent EPA web content, in collaboration with the Office of Land and Emergency Management (OLEM), to provide cleanup enforcement information using accessible and effective communication practices.
- Encourage enforcement personnel (e.g., site attorneys) to work with the program office to participate in community engagement efforts (e.g., attend public meetings) where appropriate, to better understand the community's needs and concerns, and then address them when negotiating enforcement instruments with PRPs (e.g., Remedial Investigation/Feasibility Study Administrative Settlement Agreements and Orders on Consent and RD/RA Consent Decrees).⁷
- Work with federal PRPs responsible for community outreach at federal facility NPL sites to develop best practices when communicating with impacted communities with EJ concerns.
- Coordinate with state enforcement counterparts on communicating with impacted communities.

Conclusion

With your help, we can make a difference in the lives of overburdened communities that are affected by contaminated sites. OECA will continue to evaluate and update these and other tools to be more impactful in the future, particularly in overburdened communities. I appreciate your support in this vital effort.

cc: Acting Regional Administrators
OECA Office Directors and Deputies
OLEM Office Directors and Deputies
Regional Superfund Legal Branch Chiefs
Federal Facilities Leadership Council

⁷ See [Community Engagement Initiative: Compilation of EPA's Activities Encouraging Community Engagement in Superfund Enforcement](#) (Sept. 2014) for additional ideas to enhance community engagement.






EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 20, 2021

M-21-28

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young, Acting Director, Office of Management and Budget 
Brenda Mallory, Chair of the Council on Environmental Quality 
Gina McCarthy, National Climate Advisor 

SUBJECT: Interim Implementation Guidance for the Justice40 Initiative

President Biden is committed to securing environmental justice and spurring 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. In [Executive Order 14008](#),¹ the President directed the Director of the Office of Management and Budget (OMB), the Chair of the Council on Environmental Quality (CEQ), and the National Climate Advisor, in consultation with the White House Environmental Justice Advisory Council (WHEJAC), to jointly publish guidance on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits of such investments flow to disadvantaged communities – the Justice40 Initiative. The Justice40 Initiative is a critical part of the Administration’s whole-of-government approach to advancing environmental justice.

The following Interim Implementation Guidance for the Justice40 Initiative (“guidance” or “interim guidance”) provides the initial recommendations pursuant to section 223 of Executive Order 14008,² and supports the Administration’s comprehensive approach to advancing equity for all in line with Executive Order 13958.³ The Executive branch should implement this guidance in accordance with existing authorities in order achieve the 40-percent goal.

Summary of Interim Implementation Guidance for the Justice40 Initiative

This interim guidance includes a set of actions required of agencies that manage covered Justice40 programs. These actions include identifying the benefits of covered programs, determining how covered programs distribute benefits, and calculating and reporting on reaching the 40-percent goal of the Justice40 Initiative. This interim guidance provides implementation direction to an initial set of covered programs under the Justice40 Initiative. Additional guidance is forthcoming. The interim guidance applies to all entities with covered programs, including those agencies with potential covered programs listed in Appendix B.

¹ *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg., 7619 (Feb. 1, 2021).

² *Supra* note 1, at 7632.

³ *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg., 7009 (Jan. 25, 2021).

Interim Agency Justice40 Implementation

- I. Interim Definition of Disadvantaged Communities
- II. Covered Programs
- III. Examples of Benefits of Covered Programs
- IV. Calculating Benefits
- V. Reporting
- VI. Pilot to Maximize Benefits to Disadvantaged Communities

I. Interim Definition of Disadvantaged Communities

Further guidance to agencies on how to define disadvantaged communities for the purposes of the Justice40 Initiative⁴ will be released later this year, concurrent with the establishment of a geospatial Climate and Economic Justice Screening Tool being developed by CEQ, in partnership with the United States Digital Service (USDS). This new tool will include interactive maps with indicators to assist agencies in defining and identifying disadvantaged communities.

Until such time when further guidance is provided, agencies should consider using, as appropriate, the following indicators of disadvantaged communities to implement the goals of the Justice40 Initiative utilizing existing data sources and indices that are currently used by programs serving low income, vulnerable, and underserved communities:

- **Community** – Agencies should define community as “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.”⁵
- **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
 - High unemployment and underemployment
 - Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
 - Linguistic isolation
 - High housing cost burden and substandard housing

⁴ Executive Order 14008 uses the phrase “disadvantaged communities,” and this term has been used in existing Federal and state programs to prioritize funding for environmental justice. Some community members and advocates prefer alternative terminology, and specifically the use of “overburdened and underserved communities.” Until subsequent guidance can address the question of the most appropriate terminology, this memorandum relies on the language used in Executive Order 14008.

⁵ CEQ, *Environmental Justice: Guidance under the National Environmental Policy Act* (Dec. 10, 1997), available at <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts
- Limited water and sanitation access and affordability
- Disproportionate impacts from climate change
- High energy cost burden and low energy access
- Jobs lost through the energy transition
- Access to healthcare

In determining which variables to consider, agencies should consider the statutory authority for covered programs. In addition to the above definition of disadvantaged communities, geographic areas within Tribal jurisdictions should be included.

II. Covered Programs

Agencies should work with OMB, as outlined in section IV, to review and determine whether Federal programs fall within the scope of the Justice40 Initiative. Agencies should contact their OMB Resource Management Office or email EJ@omb.eop.gov to consult on the determination of covered programs.

A. **Covered Program.** A “covered program” is a Federal Government program that makes covered investment benefits in one or more of the following seven areas:

- i. Climate change
- ii. Clean energy and energy efficiency
- iii. Clean transportation
- iv. Affordable and sustainable housing
- v. Training and workforce development (related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction, including in energy communities⁶)
- vi. Remediation and reduction of legacy pollution
- vii. Critical clean water and waste infrastructure

B. **Covered Investments.** A “covered investment” is a Federal investment in one or more of the following categories:

- i. Federal financial assistance as defined at 2 CFR 200,⁷ including both Federal grants as well as other types of financial assistance (including loans, credit, guarantees, or direct spending/benefits);
- ii. Direct payments or benefits to individuals;
- iii. Federal procurement benefits (acquisition of goods and services for the Federal government’s own use);

⁶ Energy communities, as discussed in Executive Order 14008, include coal, oil, and gas and power plant communities.

⁷ 2 CFR 200 Subpart A §200.1 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) defines Federal financial assistance.

- iv. Programmatic Federal staffing costs (e.g. federal pay for staff that provide technical assistance); and
- v. Additional federal investments under covered programs as determined by OMB.

When appropriate and within existing statutory authorities, eligible investments of covered programs include: FY 2021 enacted appropriations, supplemental appropriations, prior year carryover from unobligated balances, and (when they become available) future fiscal year appropriations.

III. Examples of Benefits of Covered Programs

Benefits include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities.

Table 1 provides a summary of additional examples of benefits of covered investments identified by the WHEJAC and the White House Environmental Justice Interagency Council (IAC) to be considered by agencies when determining the benefits of covered program.

| Category | Example Benefits When Applied for (or within) Disadvantaged Communities |
|-----------------|---|
| Climate Change | <ul style="list-style-type: none"> • Reduction of greenhouse gas (GHG) emissions and local air pollutants⁸ • Creation of community resilience plans that specifically include addressing needs of disadvantaged communities • Increased technical assistance and community engagement of disadvantaged communities • Increased flood mitigation Benefits <ul style="list-style-type: none"> • Hectares of floodplain restored • Hectares of wetlands restored • Green stormwater infrastructure • Urban flood risk mapping addressing the distribution of socially vulnerable communities and risks |

⁸ For example, program expenditures to reduce air pollution generated by one state or locality that benefit “down wind” disadvantaged communities or in, such as, installing a control device on an incinerator that reduces exposure to harmful pollutants in a disadvantaged community in a neighboring state.

| | |
|------------------------------------|--|
| | <ul style="list-style-type: none"> • Increased urban heat island effect mitigation benefits <ul style="list-style-type: none"> • Increased acres of greenspace restored • Increased tree and vegetation cover and sustainable shade coverage • Increased access to and advancement of public health warnings (weather and preparedness messages) translated into multiple languages |
| Clean Energy and Energy Efficiency | <ul style="list-style-type: none"> • Increased energy efficiency programs and resources • Deployment of clean energy, including renewable community energy projects • Establishment of community microgrids • Reduction of energy burden (e.g. the share of household income spent on home energy costs) |
| Clean Transportation | <ul style="list-style-type: none"> • Improvement in public transportation accessibility, reliability, and options • Reduction of exposure to harmful transportation-related emissions • Access to clean, high-frequency transportation • Access to affordable electric vehicles, charging stations, and purchase programs • Increased bicycle and walking paths |
| Affordable and Sustainable Housing | <ul style="list-style-type: none"> • Availability and access to affordable green housing • Reduction in displacement • Improved indoor air quality • Improved housing quality and safety and enhanced public health • Reduction in abandoned or vacant homes • Reduced housing cost burden |

| | |
|---|--|
| <p>Training and Workforce Development</p> | <ul style="list-style-type: none"> • Increased participation in clean energy good job training and subsequent good job placement/hiring, including providing the free and fair chance to join a union and collectively bargain. • Increased participation in good job training programs that target participation from disadvantaged communities, including formerly incarcerated individuals and youth transitioning out of foster care • Increased climate-smart training, including training to identify waste, efficiencies, and GHG inventories. • Increased percentage of good job training programs within energy communities, such as those that include paid employment and that measure and report participant outcomes. |
| <p>Remediation and Reduction of Legacy Pollution</p> | <ul style="list-style-type: none"> • Reduction of criteria air pollutant and toxic air pollutant exposure • Reduction in farmworker exposure to pesticides • Brownfield redevelopment • Remediation of Superfund sites • Community engagement training; capacity support for reduction strategies • Reclamation of abandoned mine lands and capping of orphan oil and gas wells |
| <p>Development of Critical Clean Water Infrastructure</p> | <ul style="list-style-type: none"> • Replacement of lead service lines • Increased access to safe drinking water and sanitary sewer services • Reduction in waterborne and respiratory illnesses • Reduction in the quantity of raw sewage discharged • Increase in the number of community water systems that meet applicable health-based standards |

Building on program metrics and engagement with state and community partners, the WHEJAC, and the IAC, and other groups including the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization, OMB will work with CEQ and USDS to develop and publish a common set of metrics to measure select benefits across agencies, e.g., improvements in air quality.

IV. Calculating Benefits

Executive Order 14008 states that “40 percent of the overall benefits” of federal investments from covered programs should flow to disadvantaged communities. To respond to that directive, each agency should establish a methodology for calculating the benefits that a) flow from each applicable covered program and b) accrue in disadvantaged communities from each covered program.

- A. **Benefits Methodology.** The determination of what constitutes a “benefit” will vary by covered program. Accordingly, each agency is directed to:
 - i. Within 60 days of the issuance of this guidance, to deliver to OMB:
 - a. An assessment of agency programs (referencing the list of programs in Appendix B) that are covered programs in accordance with section II.A and II.B of this guidance; and
 - b. A description of the types of benefits that result from the identified covered programs.
 - ii. Within 150 days of the issuance of this guidance deliver to OMB a methodology for calculating the covered program benefits accruing to disadvantaged communities. This methodology should also include a description of the metrics that the agency is developing to measure covered program benefits.⁹
- B. **Stakeholder Consultation.** When determining the benefits of a covered program, as specified in section IV(A), agencies should consult with stakeholders, including state, local, and Tribal governments, as well as Native communities, to ensure public participation and that community stakeholders are meaningfully involved in what constitutes the “benefits” of a program. In addition, if the calculation of a benefit to a disadvantaged community includes investments outside of that community, the disadvantaged community should be consulted. In engaging with stakeholders, agencies should consider their obligation under Title VI of the Civil Rights Act of 1964 to ensure meaningful access for individuals with limited English proficiency (LEP), as well as their

⁹ It may not be possible to accurately measure the allocation of covered program benefits based solely on the geography where the program expenditures occur. Accordingly, agencies should actively consider the purpose of the covered program when determining whether covered program benefits have accrued to disadvantaged communities. For example, an energy efficiency program that provides weatherization assistance to individual households may need to analyze the allocation of program benefits by tracking the characteristics of recipient households, rather than relying on geographic indicators. Programs that distribute grants to states and territories that then distribute funds to households may need to work with such states and territories to obtain additional information about the ultimate distribution of federal funding and benefits.

obligation pursuant to Section 504 of the Rehabilitation Act to take appropriate steps to ensure effective communication for individuals with disabilities. Where applicable, agencies should also comply with, the Paperwork Reduction Act, Federal Advisory Committee Act, or other relevant law, regulation, or guidance. Agencies should also review and incorporate, where appropriate, recommendations from the WHEJAC and the IAC when developing metrics. (Examples of Stakeholder Engagement Plans will be available to agencies on the MAX Justice40 page.)

V. Reporting

Agency heads are responsible for calculating the accrual of covered program benefits to disadvantaged communities. Agencies should consult with OMB when determining whether their program is a covered program. Consistent with section IV, agencies shall report the following information to OMB for each covered program within 60 days and 150 days of the issuance of this guidance, as specified, and annually thereafter.

A. Within 60 days of the issuance of this guidance agencies shall report:

- i. Agency
- ii. Program
- iii. Program ID (for financial assistance programs, this should be the assistance listing as defined in 2 C.F.R. § 200.203¹⁰)
- iv. Amount Appropriated
- v. Amount Obligated¹¹
- vi. Developed Stakeholder Engagement Plan (y/n)

B. Within 150 days of the issuance of this guidance agencies shall report:

- vii. Benefit Methodology Submitted (y/n)
- viii. Benefit Methodology Submitted (date)
- ix. Target Benefits of Program (qualitative list of types of targeted benefits)
- x. Percent of Benefits Directed to Disadvantaged Communities (e.g., percent new waste water systems installed in disadvantaged communities of total waste systems installed)
- xi. Percent of Benefits Not Directed to Disadvantaged Communities (e.g., percent new waste water systems not installed in disadvantaged communities)
- xii. Percent of Benefits with Unknown Direction (e.g., a percentage of waste water systems with unknown installation location), including a brief explanation of why the percent of benefits to disadvantaged communities cannot be determined
- xiii. Line Item Data for the Geographic Distribution of Benefits and Program Funding (e.g., a table of data with rows for the census block groups served)

¹⁰ Assistance listings refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration. Assistance listings are detailed public descriptions of federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards.

¹¹ As obligation amounts change over time, agencies should update this reported amount semi-annually.

by each waste water system installation and the locations that received funding for that installation)¹²

- a. For programs that do not target benefits geographically, the data provided should reflect the common characteristics of communities receiving benefits at the narrowest level that does not raise privacy concerns
- xiv. Amount of Program Funding Received in Disadvantaged Communities (e.g. the dollars of funding received by a grant or loan recipient in a disadvantaged community)

Forthcoming guidance will provide additional information on the tool agencies should use to report the above information discussed in sections IV and V, and specific instructions for submitting the data into that tool.

The Administration's overall progress towards the Justice40 Initiative's goal will be tracked by the categories of covered project (climate change, clean energy and energy efficiency, clean transportation, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure).

VI. Pilot to Maximize Benefits to Disadvantaged Communities

In addition to the previously mentioned covered programs, Appendix A lists 21 programs that will undertake an initial implementation of the Justice40 Interim Implementation Guidance to maximize the benefits that are directed to disadvantaged communities. These programs were selected by reviewing WHEJAC recommendations, consulting with the IAC, and reviewing agency responses to information requests about current federal investments in disadvantaged communities.

The agencies with covered programs listed in Appendix A should identify applicable program funding mechanisms, policies, and procedures based on this guidance and consider program-specific guidance that provides recommendations for maximizing the benefits of the program that accrue in disadvantaged communities, as appropriate and consistent with applicable law. Specifically, the agencies with covered programs listed in Appendix A are directed to:

- A. Develop a Stakeholder Engagement Plan.** Within 30 days of issuance of this guidance, develop a plan to engage stakeholders relevant to the covered agency program. Plans should include a timeline for engaging relevant stakeholders, to include grantees and recipients, and a list of key issues relating to implementation of the Justice40 Initiative with respect to the covered program for stakeholder input. Plans should account for other stakeholder engagement efforts, including, but not limited to public involvement activities conducted pursuant to the National Environmental Policy Act and nation-to-nation consultations with

¹² Although this request includes the submission of detailed data, the calculation of several items listed already requires such data to exist, and this requirement asks the agency to also report the raw data used to make those calculations. Since disadvantaged communities in the CEJST will be defined at a very narrow geographic level, agencies need to prepare benefits and place of performance data at a narrow geographic level to perform these calculations. Agencies should report at the narrowest geographic unit possible.

Tribes. In addition, if the calculation of a benefit to a disadvantaged community includes investments outside of that community, the disadvantaged community should be consulted.

- B. Justice40 Implementation Plan to Maximize Benefits.** Within 60 days of issuance of this guidance, develop a draft implementation plan describing a) the agency's plan to maximize benefits of the covered program in disadvantaged communities; b) any significant barriers or constraints to maximizing benefits to disadvantaged communities; c) opportunities and/or resource needs that may address the identified barriers or constraints; and, d) timelines for achieving the milestones identified in the agency's plan.
- C. Consider the Following Program Modifications to Maximize Benefits.** When developing a Justice40 implementation plan to maximize benefits, that agency should consider the following guidelines, to the **extent consistent with statutory and constitutional requirements**, for modifying programs:
- i. Foster well-paying job creation and job training, including a free and fair chance to join a union and collectively bargain.
 - ii. Coordinate investments and leverage funds where possible to provide multiple benefits and to maximize benefits.
 - iii. Avoid potential burdens to disadvantaged communities.
 - iv. Ensure transparency and accountability through full compliance with OMB requirements at 2 C.F.R. part 200 for financial assistance programs and provide public access to program information including through high quality data in compliance with Federal Funding Accountability and Transparency Act reporting (2 C.F.R. § 200.212).
 - v. Conduct outreach, and support technical assistance and capacity building to help potential applicants' access, manage, and report on results of funding.
 - vi. Hold competitive solicitations that prioritize or award extra points to projects that meet the criteria for benefiting disadvantaged communities and includes community engagement, planning, and feedback.
 - vii. When developing eligibility requirements in program guidelines and solicitation materials, establish targets or minimum thresholds for a specific benefit. For example, an agency could identify a certain percentage of total jobs for a project to be held by residents of a disadvantaged community in order to receive a higher priority for funding.
 - viii. Require applicants to apply cost savings from project implementation to benefit disadvantaged communities (e.g., energy cost savings reinvested in the local community to promote workforce development and community health).
 - ix. To the extent modifications are restricted by statute or regulation, describe what, if any, legislative changes would be required to advance the goals of Justice40 Initiative with respect to such covered program.
- D. Calculating Benefits and Reporting.** Within 60 days of issuance of this guidance, in line with section IV. A and V (but on the timeline specified in section VI.), provide a methodology for calculating, the covered program benefits

accruing generally and to disadvantaged communities. This methodology should also include a description of any additional metrics that the agency is developing to measure covered program benefits.

E. Other Reporting. The pilot programs listed in Appendix A should also plan to report the information outlined in section V.

Pilot programs should submit the requested information to EJ@omb.eop.gov by the stated deadlines. Agencies may also use EJ@omb.eop.gov to pose any questions regarding this guidance.

Appendix A. Justice40 Covered Program Pilot to Maximize Benefits to Disadvantaged Communities

| Agency | Program |
|---------------|---|
| ARC | Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) |
| DHS | Flood Mitigation Assistance Program |
| DHS | Building Resilient Infrastructure and Communities Program (BRIC) |
| DOE | Weatherization Assistance Program |
| DOE | Solar Energy Technologies Office (National Community Solar Partnership) |
| DOE | Vehicles Technologies Office (Clean Cities) |
| DOE | Environmental Management, Los Alamos |
| DOE | Advance Manufacturing Office (Industrial Assessment Centers) |
| DOI | Abandoned Mine Land Economic Revitalization (AMLER) Program |
| DOT | Bus and Bus Facilities Infrastructure Investment Program |
| DOT | Low or No Emissions Vehicle Program |
| EPA | Drinking Water State Revolving Fund |
| EPA | Clean Water State Revolving Fund |
| EPA | Brownfields Program |
| EPA | Superfund Remedial Program |
| EPA | Diesel Emissions Reductions Act Program (DERA) |
| EPA | Reducing Lead in Drinking Water |
| HHS | National Institute of Environmental Health Science (NIEHS) Environmental Career Worker Training Program |
| HHS | Low Income Home Energy Assistance Program (LIHEAP) |
| HUD | Lead Hazard Reduction and Healthy Homes Grants |
| USDA | Rural Energy for America Program |

Appendix B. Internal Guidance for Agencies

A. Covered Program List

OMB has begun compiling a list of potential “covered programs” at <https://go.max.gov/justice40>. The programs listed have potential existing authorities that could be used to benefit disadvantaged communities. Agencies with covered programs are directed to begin examining (and consider modifications to) policies, practices, and procedures to implement the Administration’s Justice40 goals. If an agency would like to request to add or remove a program from this list, please contact EJ@omb.eop.gov.

B. Agencies with Potential Covered Programs

Appalachian Regional Commission
Corporation for National and Community Service
Corps of Engineers--Civil Works
Delta Regional Authority
Denali Commission
Department of Agriculture
Department of Commerce
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of State
Department of the Interior
Department of Transportation
Department of Veterans Affairs
Environmental Protection Agency
National Aeronautics and Space Administration
National Science Foundation