

ENVIRONMENTAL AND ENERGY INFORMATION MEMO

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Update: EPA Finalizes its Environmental Justice Action Plan

On Sept. 30, 2022, the Environmental Protection Agency (EPA) Office of Land and Emergency Management (OLEM) finalized its Environmental Justice (EJ) Action Plan (EJAP). The EJAP directs federal agencies to promote and work towards achieving environmental justice in communities that are historically underserved and adversely affected by persistent poverty and inequality. While the EJAP provides opportunities for development grants in EJ communities, it also creates additional requirements in several existing regulatory schemes.

Background

In 2021, President Biden issued two executive orders which directed federal agencies to promote and work towards achieving environmental justice. Executive Order 13985 declared that it was the policy of the Federal Government to 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.”¹ Federal agencies were tasked to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Executive Order 14008 further directed federal agencies to make “achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.”² The EJAP is a key component of EPA’s OLEM strategy for implementing these directives, and the plan highlights projects, tools and practices that will be applied to several programs including, but not limited to, Superfund sites, Emergency Response protocols, Resource Conservation and Recovery Act (RCRA) Corrective Action and underground storage tank programs. During the development of the EJAP, OLEM consulted regional program partners and other stakeholders to review, comment, and share concerns. A draft EJAP was issued in January 2022, and several public engagement sessions were conducted during July and August 2022. The concerns were considered as the EJAP was finalized.

The Plan

A wide range of programs are under OLEM’s purview. OLEM developed the EJAP as a means of enhancing its programs to focus on and benefit communities with EJ concerns. The EJAP uses new and existing tools to improve environmental outcomes in the affected communities.

A major goal of the EJAP is to strengthen compliance with “cornerstone” environmental statutes, such as RCRA, in communities overburdened by pollution. One pathway the EJAP proposes to meet this goal

1 Exec. Order No. 13985, 86 Fed. Reg. 7009 (<https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>)

2 Exec. Order No. 14008, 86 Fed. Reg. 7619 (<https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>)

is by creating a network by which community concerns can be directed to agencies with authority to address such issues. Increased communication can impact project planning efforts and resources by providing technical support through various channels and grants. The EPA offers Technical Assistance Service for Communities (TASC), which provide communities with EJ concerns with more resources for more effective engagement. TASC resources can be used to assist with reviewing and commenting on technical information related to contamination and cleanup. This will allow communities to engage with regulators making cleanup decisions in a more meaningful way.

In addition, the EJAP proposes drafting and finalizing revisions to the Clean Air Act Risk Management Plan (RMP) regulations (40 CFR Part 68) to strengthen prevention and emergency response programs in EJ areas. Any potential revisions may create additional requirements at RMP facilities. While the programs may reduce frequency and severity of spill incidents, they may create additional costs for businesses and residents near EJ areas.

Another goal of the EJAP is to incorporate EJ concerns into the EPA's work. One way of doing this is by requiring EJ analysis for projects which receive EPA funding. For example, the EJAP proposes providing funding to regions to address EJ concerns in PFAS projects at Federal Facility National Priority List sites, the development of an EJ specific award category during EPA's 2022 award cycle, and the incorporation of EJ assessments into the Superfund program's application.

Executive Order 14008 mandates that at least 40% of the benefits of certain federal programs must flow to disadvantaged communities. The Office of Resource Conservation and Recovery, in conjunction with the EPA, was tasked with considering and prioritizing direct and indirect benefits to underserved communities. Coordination between these agencies as well as with underserved communities is required for the success of the Justice40 initiative. ORCR has announced the availability of funds to assist in accelerating the development of new or enhancement of existing anaerobic digestion capacity, and to assist with the RCRA Hazardous Waste Management Program.

Future Implications

The EJAP outlines various stages of project completion, including expected completion of some portions as early as this year. The plan leaves some uncertainty as to how, and to what extent, the regulated community will be impacted. However, it is clear that additional grant opportunities and increased community participation will result from the EJAP. The Environmental and Energy attorneys at Bond can help guide your business through the complicated regulatory landscape.

If you have any questions about this information memo, please contact [Julia O'Sullivan](#), any attorney in Bond's [environmental and energy practice](#) or the attorney at the firm with whom you are regularly in contact.

