



ANALYSIS

## **The Rising Tide of Environmental Justice and Preparing for the Next Wave**

Once a topic confined to activism and academia, environmental justice has washed over national conversation, and industry is preparing for the next wave.

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By Krista McIntyre, Ariel Stavitsky and Lydia Heye

Once a topic confined to activism and academia, environmental justice (EJ) has washed over national conversation, and industry is preparing for the next wave. With growing private sector awareness, Fortune 500 companies and their investors are implementing EJ policies, responding to employee demands for EJ in talent recruitment and retention, and even including EJ-based risk assessment in corporate transactional due diligence. Meanwhile, EJ continues to gain momentum in political, legislative and administrative spheres as government agencies incorporate these principles across the regulatory landscape.

The result is a steadily rising tide of motivation flooding a historic—and often confusing—patchwork of state and federal EJ expectations. To keep afloat, industry players must be open-minded, objective and proactive in their approach to EJ initiatives. By engaging affected communities and examining the true impacts of their business practices and policies, businesses can improve not just their bottom line but the community at large.

This three-part series aims to help the regulated community navigate these waters.

Whether driven by moral imperative, market hand, or governmental decree, readers will gain insight on EJ, the evolving EJ regulatory landscape, and why businesses today must be on deck navigating the tide or risk being left behind.

### **What Is Environmental Justice?**

Environmental justice is defined by the Environmental Protection Agency (EPA) as 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.” EJ combats the disparate impact of environmental and health hazards on low-income neighborhoods and communities of color through distributive, procedural, corrective, and social justice. See Robert R. Kuehn’s *A Taxonomy of Environmental Justice* (2000).

A systemic problem, environmental injustice touches nearly all aspects of society today—pollution, food security, energy equity, disaster relief, housing access, tribal sovereignty, urban planning, socioeconomic growth, political representation, transportation, education, and climate change. EJ targets every factor impacting one’s ability to live in a safe and healthy community and to access opportunities. Accordingly, EJ touches nearly every commercial and industrial sector in one way or another.

Through these forces, “whether by conscious design or institutional neglect,” explained Dr. Robert Bullard, known as the father of EJ, “communities of color in urban ghettos, in rural ‘poverty pockets’ or on economically impoverished Native American reservations face some of the worst environmental devastation in the nation.” EJ has brought to light how people of color are more likely to live in fence-line communities, next to industrial and commercial facilities. Data have repeatedly shown those living in fence-line communities are more susceptible to the social, economic, and health impacts of emissions, odors, noise, and stress from proximity to these facilities. Columbia University’s Climate School reports that Black Americans die from asthma-related causes at almost three times the rate of whites; half of all Latinos live in counties that fail EPA public health standards for smog; and an outsized share of U.S. climate change impacts are borne by Native American tribes. These data demonstrate the time for EJ is not only ripe but overdue.

### **A Brief History of Environmental Justice**

Understanding the EJ movement and its history is important to embrace effectively the concept today. The term “environmental justice” was coined during the Civil Rights movement of the 1960s, when Rev. Dr. Martin Luther King Jr. brought attention to ongoing environmental injustices borne by predominately Black garbage workers at a Memphis, Tennessee sanitation facility. A 1982 protest by majority Black community members joined by civil rights and environmental activists against a PCB-laden landfill further catalyzed the EJ movement. Five years later, a landmark national study found a positive correlation between subjects’ race and their proximity to hazardous waste sites, and the body of

empirical evidence of environmental injustice sprouted. See United Church of Christ, Commission for Racial Justice, *Toxic Wastes and Race in the United States* (1987).

EJ first gained agency attention beginning in the 1980s, with the establishment of EPA's Office of Environmental Justice in 1992 and National Environmental Justice Advisory Council in 1993. In 1994, President Clinton passed Executive Order 12898, directing federal agencies to identify EJ communities and promote nondiscrimination in health- and environment-focused federal programs, and creating the Interagency Working Group on Environmental Justice. Chief among the order's directives, however, was the incorporation of EJ principles into reviews under National Environmental Policy Act (NEPA), a behemoth environmental law that requires federal agencies to assess the environmental effects of their proposed actions. Thus, agencies were urged to identify and address the human health and environmental impacts of federal programs, policies, and activities on low-income neighborhoods and communities of color.

In the years since, various agencies have issued administrative guidance on how EJ is to be implemented throughout existing regulatory schemes (e.g., EPA Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews; U.S. Department of Agriculture Environmental Justice Strategic Plan; U.S. Department of Defense Strategy on Environmental Justice). But administrative guidance is not a rule and implementation is often incoherent, confusing. Absent binding authority requiring (or prohibiting) agencies and the regulated community to act, EJ languished in administrative limbo until now.

### **The Rising Tide of Environmental Justice Today**

The EJ movement has swelled in recent years, rising to the forefront of national discourse. Community-centered EJ organizations have proliferated throughout the country, bringing awareness to environmental injustices. That awareness attracted the focus of many environmental non-governmental organizations—often predominantly white and many of which historically have ignored EJ issues for other regulatory environmental concerns.

Once other interest groups such as labor unions, health professionals, and social justice activists joined the movement, multi-sector coalitions formed to address environmental injustices. This energy, strengthened by increased traditional and social media attention, is motivating industry action, lest they suffer public rebuke or litigation.

Recent current events have spurred the national discourse on EJ. In 2014, the Flint water crisis in Michigan shined light on how low-income and communities of color are often overlooked by the government and industry when it comes to environmental and public health decisions. During the 2016 Dakota Access Pipeline protests, the Standing Rock Sioux Tribe alongside environmental activists brought the nation's attention to inadequacies of the current tribal consultation process and the marginalization of Indigenous interests in decision making. Demands for social justice after the 2020 murder of George Floyd and growth of the Black Lives Matter movement further energized the call for EJ, as more Americans learned of the intersections of EJ and other social concerns. And fundamental inequities were illuminated by the disproportionate rates of COVID-19 hospitalization and deaths among low-income and communities of color during the pandemic.

Recent advancements in data collection and analysis, too, have informed and refined our collective understanding of the disparate impacts of environmental and health hazards. EPA's EJSCREEN and California's CalEnviroScreen, for example, are mapping and screening tools that provide granular environmental and demographic information across geographies. These tools allow agencies, the regulated community, and the public to evaluate and consider EJ impacts in permitting, enforcement, or compliance programs.

Under this confluence of forces, what began as an activist movement and proliferated in academic scholarship and administrative policy is now a regulatory priority under the Biden-Harris Administration and a key business consideration for private industry. In a January 2021 executive order, President Biden announced his aim to "hold polluters accountable for their actions" and to "deliver environmental justice in communities all

across America,” by restructuring federal EJ institutions, creating an EJ-facing task force, and revitalizing U.S. Department of Justice EJ enforcement efforts. EPA’s 2022 proposed budget includes \$900 million for EJ-related work.

The tide reveals that we can expect new EJ-based regulations, policies, and initiatives to emerge soon. Next, this series will explore EJ requirements in current state and federal regulatory landscapes, how those landscapes may evolve, and what key indicators the regulated community must consider to remain proactive in addressing EJ in their decision-making processes.

**Krista McIntyre** is an environmental compliance counselor and enforcement defense partner based in Stoel Rives LLPs’ Boise, Idaho office. Krista started her career in Washington, D.C. as an enforcement attorney at the U.S. Environmental Protection Agency and the U.S. Department of Justice. Krista served as the practice group leader of Stoel Rives’ Environment, Land Use, and Natural Resources practice group from 2011-2019. In 2018, Krista was admitted to the American College of Environmental Lawyers and currently serves as a co-chair of ACOEL’s Outreach Committee.

**Ariel Stavitsky** is an environmental attorney with Stoel Rives in Portland, OR. Her practice includes environmental and natural resource-related litigation, project permitting, and regulatory counseling across multiple industries. Ariel previously worked in Atlanta, GA as an environmental risk management consultant, experience she now draws on to help clients proactively solve complex environmental issues.

**Lydia Heye** is a 2020 Summer Associate with Stoel Rives and J.D. Candidate at the U.C.L.A. School of Law, where she specializes in environmental law and critical race studies, including environmental justice issues. Prior to joining Stoel Rives, Lydia worked as a law fellow with the Promise Institute for Human Rights on their International Criminal Law and the Protection of the Environment Project.