

ENVIRONMENTAL JUSTICE UPDATE

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US Environment, Land, and Natural Resources Alert

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Environmental justice (EJ) developments continue to reshape the regulatory and enforcement landscape at both the federal and state levels. While the federal government has taken steps to roll back EJ-focused policies, states are increasingly moving in the opposite direction—advancing new legislation, regulatory requirements, and enforcement approaches that integrate EJ considerations into permitting, compliance, and enforcement. This update examines key federal and state developments for the year to date and considers their implications for companies navigating the regulatory landscape.

FEDERAL

The United States Environmental Protection Agency (EPA) to Remove FOIA Regulation

Earlier this summer, the Trump administration published its 2026 Unified Agenda of Regulatory and Deregulatory Action (Agenda), which outlines the short- and long-term regulatory actions the administration is pursuing or plans to pursue. The Agenda indicates that the administration intends to finalize an “EPA Freedom of Information Act (FOIA) Regulations Update” rule following a notice of proposed rulemaking issued in January 2026. If finalized, this rule would eliminate the inclusion of the November 2023 Environmental Justice Expedited Processing criteria, which “provides expedited processing and a fee waiver for requests if the records sought pertain to an EJ related need and will be used to inform an affected community.” This action is intended to align the rulemaking with the January 2025 on Executive Order (EO) 14151 “Ending Radical and Wasteful Government DEI Programs and Preferencing.”

The Agenda lists July 2026 as the target date for when the final rule would be published; however, the rule had not been published as of 28 August 2026. A delayed publication is not unusual, as competing deadlines and other federal priorities often take precedence.

EPA Moves to Narrow Title VI Nondiscrimination Regulations

On 11 August 2026, the EPA sent a final rule for review to the White House's Office of Information and Regulatory Affairs that would rescind portions of its Title VI implementing regulations, including provisions addressing discriminatory effects and the EPA's procedures for processing such complaints. According to the EPA, the changes are intended to align its regulations more closely with the statutory text of Title VI and implement Executive Order 14281, “Restoring Equality of Opportunity and Meritocracy,” while also bringing the EPA's complaint-processing procedures into greater conformity with those used by other federal agencies. The

regulatory agenda had anticipated a final rule in July 2026, but the rule has not yet been published in the Federal Register.

Fourth Circuit Vacates Injunctions Restoring Terminated Environmental and Climate Grants

On 21 January 2026, in the case captioned *The Sustainability Institute v. Trump*, the US Court of Appeals for the Fourth Circuit vacated two injunctions requiring the reinstatement of federal grants that the Trump administration terminated or froze. The injunctions covered 38 grants involving the plaintiffs—a group of nonprofit organizations and local governments that either received the funds directly or served as subrecipients. The grants were administered through several programs at the EPA and the Departments of Energy, Agriculture, and Transportation, including grants under the US\$2.8 billion Environmental and Climate Justice Block Grant Program established by the Inflation Reduction Act (P.L. No: 117-169).

Following remand, on 11 June 2026, the US District Court for the District of South Carolina ruled that the EPA's guidance terminating the Environmental and Climate Justice Block Grant Program was unlawful and vacated that guidance. US District Judge Richard Mark Gergel held that the EPA's decision to end the program violated the Administrative Procedure Act as arbitrary, capricious, and contrary to law.

The court's ruling, however, was limited to the EPA's program-level termination guidance. The plaintiffs did not seek reinstatement of their individual grants, and the court did not disturb the Fourth Circuit's determination that challenges to individual grant terminations belong in the Court of Federal Claims. As the opinion noted, Travis Voyles, EPA assistant deputy administrator, decided on 25 February 2025, following an individualized review, that certain grant programs—including this one—should be terminated for “policy reasons.”

Although Judge Gergel vacated the EPA's termination guidance, he declined to issue a permanent injunction compelling the EPA to implement the program, rehire the staff who had administered it, or extend the 30 September 2026 statutory deadline. The court concluded that such relief would be “impractical.” The court also rejected the government's argument that the One Big Beautiful Bill Act (OBBBA) (P.L. No: 119-21) had mooted the case, holding that the act rescinded only funds that were unobligated when the legislation was enacted.

On 29 June 2026, the plaintiffs moved to enforce the judgment and clarify relief, contending that the vacatur of the EPA's guidance obligated the agency to operate the program, not merely to rescind its termination. On 22 July 2026, Judge Gergel granted the motion in part, clarifying that the EPA “must comply with its statutory obligations to administer the ECJ Program” and that program funds “must be made available through September 30, 2026.” The court again rejected the government's reliance on the OBBBA, holding that its earlier interpretation—that the act's rescission of unobligated funds did not moot the plaintiffs' claims—was the law of the case and that “EPA may not flout the Court's prior order based on a legal argument which it advanced and the Court rejected.”

PENNSYLVANIA

The Pennsylvania Department of Environmental Protection (PADEP) issued a final EJ policy in January 2026. The final policy largely retains the structure of the interim final EJ policy published in September 2023, including enhanced public participation requirements for certain major environmental permits in designated “EJ Areas” and a directive for PADEP to prioritize environmental enforcement in those areas.

Under the final policy, census block groups are considered EJ Areas if they have a PennEnviroScreen score at or above the 80th percentile score, or, where no overall score is available due to data gaps, a Pollution Burden Score in the highest five percent. These criteria may result in more project locations being subject to enhanced public participation requirements.

The policy automatically applies to “Trigger Projects,” including certain mining permits, air permits for new major sources of hazardous air pollutants or criteria pollutants, and National Pollutant Discharge Elimination System permits for industrial wastewater facilities with discharges of at least 50,000 gallons per day. Projects subject to the policy may require additional community outreach, public meetings, and stakeholder engagement earlier in the permitting process, potentially increasing permitting timelines and costs.

Additionally, PADEP clarified that it plans to regularly update both the PennEnviroScreen methodology and underlying data. While substantive methodological changes will be subject to notice and public comment, updates to existing data will not. As a result, the geographic boundaries of EJ Areas may change over time without formal rulemaking. Permit applicants and facility operators should periodically review PennEnviroScreen to determine whether a project location has become newly subject to the policy.

VIRGINIA

On 8 April 2026, Governor Abigail Spanberger signed House Bill 1266 into law. Effective 1 July 2026, the law requires cities with populations greater than 20,000 and counties with populations greater than 100,000 to consider adopting an EJ strategy as part of their next and subsequent comprehensive plan reviews.

The strategy must identify EJ and fenceline communities within the planning commission's jurisdiction and establish objectives and policies to reduce health risks, promote civic engagement, prioritize improvements and programs addressing community needs, and establish baseline environmental and health conditions to identify disproportionate public health impacts in fenceline communities.

Although the legislation does not impose new permitting requirements, it encourages local governments to incorporate EJ considerations into long-range planning decisions. These strategies could, over time, influence land-use policies, infrastructure planning, community engagement expectations, and the review of future industrial and infrastructure projects.

DELAWARE

On 22 April 2026, Delaware's Justice 40 Oversight Committee (Committee) released its final recommendations, calling for a more coordinated statewide approach to EJ planning and investment and building on existing state mapping and screening tools and other EJ initiatives.

Key recommendations include:

- Continued use of Equity Focus Areas, which are designated geographic block groups used to identify disadvantaged communities;
- Broader cross-agency use of mapping and screening tools to guide program and investment decisions;
- Improved public access to air, water, and soil-quality data; and

- Additional staffing in the Delaware Department of Natural Resources and Environmental Control's EJ Office to support community assistance.

The Committee also recommends legislation to create an Office of Sustainability to coordinate environmental, equity, economic, energy, and health initiatives across agencies and local governments, along with an interagency coordination office to improve agency collaboration.

Although advisory, the recommendations may signal areas of potential future legislative, agency, and community-engagement priorities, particularly in communities facing cumulative environmental burdens.

ILLINOIS

On 7 August 2026, Governor JB Pritzker signed Illinois SB 3772. The bill adds an EJ-specific layer to Illinois air permitting for certain new and existing sources in “area[s] of environmental justice concern” and codifies certain EJ permit review commitments the Illinois EPA previously agreed to implement under a 2024 Informal Resolution Agreement with the EPA. The bill defines an “area of EJ concern” as “a geographical area, the population of which potentially experiences disproportionate environmental harms and risks as a result of both environmental and socioeconomic conditions that may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.” Illinois EPA must identify these areas every three years based on census block groups in the top 25% statewide, using a combination of environmental and socioeconomic indicators. The environmental indicators include particulate matter, toxic releases, vehicle traffic, drinking-water violations, hazardous-waste facilities, underground storage tanks, and other environmental conditions. Socioeconomic indicators include unemployment, limited English proficiency, low educational attainment, and the presence of young children and older adults.

The new requirements apply to construction permit applications filed on or after 1 January 2027, for:

- New sources in an area of EJ concern that will require a Clean Air Act permit or a Federally Enforceable State Operating Permit;
- Existing permitted sources in an area of EJ concern seeking to increase annual permitted emissions; and
- Existing sources in an area of EJ concern for which proposed emissions increases would trigger either permit requirement.

For covered applications, Illinois EPA must determine whether a project is located in an EJ concern area, notify local officials and community stakeholders, evaluate whether emissions can be reduced or limited, assess whether additional air-quality modeling is needed, and consider whether enhanced permit conditions are appropriate. The Agency could impose measures such as additional air monitoring or emissions testing, operational limits, dust or odor controls, pollution-prevention measures, and community outreach.

The bill would also establish an Office of Environmental Justice within the Illinois EPA to coordinate EJ efforts across Agency programs, oversee language access policies, and enhance outreach in areas of EJ concern.

MICHIGAN

On 31 March 2026, the Department of the Environment, Great Lakes, and Energy (EGLE) released MiEJScreen 1.5, an updated version of Michigan's EJ screening tool. MiEJScreen compares environmental, health, and socioeconomic conditions across communities at the census-tract level and generates a combined score showing relative burdens across the state. The tool is designed to help identify communities most affected by cumulative environmental health impacts.

The tool evaluates indicators across four categories: environmental exposure, environmental effects, sensitive populations, and socioeconomic factors. Although Version 1.5 uses the same underlying data as the prior version, it updates the interface to align with other EGLE mapping tools and adds several accessibility and navigation features:

- The new “Near Me” feature, which facilitates location-based screening around proposed or existing facilities;
- Direct data downloads, allowing users to more readily access underlying data for analysis, and reporting; and
- The “Add Data” feature, which allows users to layer additional information onto the map for comparison with MiEJScreen indicators.

MiEJScreen is not a mandatory component of EGLE permitting decisions and does not independently determine whether an EJ concern exists. However, information generated by the tool may inform other EGLE actions.

NEW JERSEY

On 14 July 2026, the New Jersey Supreme Court granted certification to review the Appellate Division's decision upholding the New Jersey Department of Environmental Protection's (NJDEP) EJ Rules. New Jersey's EJ Law, N.J.S.A. § 13:1D-157 (2025), requires certain facilities seeking permits for new operations, expansions, or major-source permit renewals to evaluate their potential environmental and public-health impacts on overburdened communities and, where appropriate, identify measures to avoid or reduce those impacts. NJDEP adopted implementing regulations to the 2020 EJ statute in 2023. In January 2026, the Appellate Division rejected challenges to the EJ Rules, holding that the regulations were consistent with the Legislature's objectives and that NJDEP was entitled to “substantial deference” in implementing them.

The Supreme Court's decision to review the ruling creates an important opportunity for the court to address the scope of NJDEP's authority and the extent to which the EJ Law permits the department to impose additional permitting requirements on regulated facilities. Briefs will be submitted through October 2026, and oral arguments have not yet been scheduled.

NEW YORK

In May 2026, the New York State Department of Environmental Conservation (NYSDEC) finalized amendments to the State Environmental Quality Review (SEQR) regulations under 6 NYCRR Part 617 to incorporate requirements of the EJ Siting Law. The amended regulations became effective 12 June 2026, and require

agencies to consider whether certain proposed actions may cause or increase a disproportionate pollution burden on a disadvantaged community (DAC), including cumulative environmental impacts, as part of the SEQR process. SEQR applies to state and local governmental actions such as permits, approvals, funding, and direct agency actions, unless exempt or classified as Type II actions under 6 NYCRR Part 617.

The amendments also update the state's environmental assessment forms to include DAC-related questions and introduce the Disadvantaged Community Assessment Tool to help identify DAC census tracts based on cumulative environmental pollution burdens and population vulnerability. For environmental permitting, the changes formally integrate DAC impacts and cumulative pollution burdens into SEQR and applicable NYSDEC permitting decisions, potentially requiring more detailed evaluation of existing and cumulative pollution burdens, community engagement, and supporting justification for certain new or modified permits within or near DACs.

CONCLUSION

Our EJ Task Force continues to closely monitor developments in this rapidly evolving area. As the regulatory focus on EJ continues to shift, businesses—particularly those operating in or near overburdened communities—should track policy and enforcement developments at both the federal and state levels. Staying informed and proactive is essential to managing risk and meeting emerging compliance expectations. The firm is ready to help clients understand how these and other changes may affect their operations.

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