

Why Environmental Law Should Concern You: ESG, EJ, & PFAS

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May 16, 2023



Per- and Polyfluorinated Substances (PFAS)

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PFAS

- Lessons from Maine
- Other states following suit
- Plenty to follow at the federal level

PFAS – Maine

- 2021 Legislation
 - 2023: Reporting intentionally added PFAS in products
 - 2030: Ban on all non-essential PFAS uses



PFAS – Maine



- Current status
 - DEP has not completed rulemaking
 - 2500+ reporting extensions
 - Complex supply chains
 - Broad definition of “PFAS”
 - CBI/trade secrets
 - Testing methods and capacity
 - No “unavoidable use” determinations yet
- Amendments on the way?
- Other action in the state

PFAS – Other States

- MA (proposed)
 - Reporting in 2026
 - Phased ban to 2030
- MN (proposed)
 - Reporting in 2026
 - Phased ban to 2032
- Maine is the model
 - “PFAS”
 - “Unavoidable uses”
 - Reporting
 - Phase out “unnecessary” uses

PFAS – Other State Issues

- Opportunities for input
 - State agency rulemaking
 - NEWMOA “PFAS Prevention Model Act”
- Litigation
- Ripple effects

PFAS – Plenty of Federal Action

- EPA's proposed MCL
- CERCLA proposed hazardous substance designation
- Clean Water Act enforcement action

Environmental Justice: Federal & State Updates

Lauren Karam, Associate



Discussion Roadmap

What is Environmental Justice?

Recent Federal Developments in
Environmental Justice

EJ State Action: MA Example

Corporate Best Practices for
Environmental Justice

Q&A

What is Environmental Justice?

Foundation in
civil rights
movement

1980s reports
tied race to
toxic waste
facility siting

1994 Executive
Order 12898 -
first significant
federal EJ
authority

2021 = New
Era of EJ

April 21, 2023 Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All

- **“Environmental justice”** means the **just treatment** and **meaningful involvement** of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:
 - (i) are **fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards**, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
 - (ii) have **equitable access to a healthy, sustainable, and resilient environment** in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.”

What is an ~~EJ~~ community?

Overburdened?

Disadvantaged?

Community with environmental justice concerns

Communities with environmental justice concerns exist in all areas of the country, including urban and rural areas and areas within the boundaries of Tribal Nations and United States Territories. (Apr. 21, 2023 EO, Sec. 2)

Demographics

- Low incomes or otherwise adversely affected by persistent poverty or inequality
- Significant proportion of people of color
- Geographically dispersed and mobile populations, such as migrant farmworkers

Disproportionate & Adverse Human Health Or Environmental Burdens

- Inequitable access to clean water, clean air, natural places
- Concentration of pollution, hazardous waste, and toxic exposures
- Underinvestment in affordable housing that is safe and healthy and in basic infrastructure and services to support such housing, including safe drinking water and effective sewage management
- Cumulative impacts of exposure to those types of burdens and other stressors, including those related to climate change and the environment, further disadvantage communities with environmental justice concerns

What should you know about Biden's EJ EO?

Broadens and amends EO 12898, adding EJ definition, clarifying NEPA EJ analysis, and adjusting “disproportionate high and adverse human health and environmental effects” language

Increased agency accountability, including required EJ Strategic Plans and Assessments

Creates White House Office of EJ, with cross-agency oversight and alignment responsibilities

Creates EJ Subcommittee of National Science and Technology Council, Office of Science and Technology Policy to fill research gaps

Requires **community notification and public meeting for toxic releases**



State Action: MA Example

- MA has been ramping up EJ measures over the past few years.
- This includes 2021 Climate Law “An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy”
 - Defines EJ
 - Includes specific EJ directives

Massachusetts

- The 2021 law directed the Department of Environmental Protection (MassDEP) to:
 - Evaluate and seek public comment on incorporating cumulative impact analyses (CIA) into its review of applications for certain categories of air permits and approvals.
 - DEP proposed these regulations in December 2022.

MA Definition

“Environmental justice principles”, principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes: (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and (ii) the equitable distribution of energy and environmental benefits and environmental burdens.

MA Cumulative Impact Analysis

- The draft regulations require applicants for certain air permits to conduct a cumulative impact analysis, which involves:
 - providing advanced public notice and involvement
 - assessing existing community conditions
 - conducting air quality dispersion modeling of criteria pollutants and air toxics
 - characterizing the risks of air toxics
 - evaluating proposed project cumulative impacts

MA Cumulative Impact Analysis

- Proposed regulations set EJ radius.
- CIA needed for:
 - non-major comprehensive plan applications for projects located within one mile of an “EJ population” as defined by existing Massachusetts law
 - major comprehensive plan applications within five miles of an EJ population
- “Proposed projects” include “construction, substantial reconstruction, alteration, or subsequent operation of a facility or emission unit for which a cumulative impact analysis is required.”

MA Cumulative Impact Analysis

- The regulations would prohibit MassDEP from approving permit applications subject to this rule where the proposed project poses:
 - cumulative cancer risks that exceed a lifetime cancer risk of ten in one million;
 - and/or cumulative non-cancer risks that exceed a hazard index equal to one.
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National Framework for Cumulative Impact Analyses

- NY and NJ have similar laws that require state environmental agencies to assess EJ considerations in permit issuance and renewal decisions.
- EPA has also prioritized cumulative impacts and released a report in Sept. 2022 on cumulative impact research.



Other Recent Developments & Notable Trends

New Era of EJ

- “All-of-Government” Approach
- Heightened Agency Accountability
- More Transparency and Engagement for Communities
- Unprecedented Capacity Building
- More Carrots Than Sticks (but still some sticks): funding with EJ requirements and targeted enforcement activity

Increased State Activity

- EJ in Permitting (NJ, NY, PA, CT)
- Climate initiatives and legislation with EJ components

Beyond Government

- Reputational Risk
- Litigation
- Investor Demands

Corporate EJ Best Practices to Consider



Identify Stakeholders, Communities & Conditions Near Your Operations



Conduct an EJ Audit to Identify Potential Risks & Opportunities



Develop Targeted & Proactive Engagement Strategy



Institute Companywide EJ Training Program



Incorporate EJ into Policies, Practices, & Governance



Questions?



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