

Cos. Face Enviro Justice Tug-Of-War Between States, Feds

By **Stacey Halliday and Jeffrey Talbert** (May 6, 2025)

Since 2019, state legislatures have increasingly proposed and advanced laws with explicit environmental justice requirements — including laws governing permitting, land use and climate policy.[1]

While environmental justice is not a new concept for many states — California launched its EJ-focused mapping tool in 2013 — states from Colorado to New York have lately introduced laws that set new benchmarks for how EJ considerations could reshape the regulatory landscape.

States such as New Jersey have introduced environmental justice-focused permitting and land use laws, while others have incorporated environmental justice considerations in climate policy, built out EJ-focused offices and established targeted guidance.

This intensification of state environmental justice requirements was accompanied by an unprecedented whole-of-government incorporation of EJ at the federal level by the Biden administration. Many regulated entities accordingly adjusted practices to meet evolving compliance obligations, limit enforcement risk and take advantage of funding opportunities.

However, within his first 100 days, President Donald Trump has taken swift action in his second term to eliminate federal environmental justice policies, programs, offices, initiatives and funding opportunities that he and his advisers describe as discriminatory violations of federal civil rights laws and obstacles to achievement of other administration priorities.

The change in course has been seismic — including withdrawal of all federal executive orders authorizing environmental justice-related activities, terminating or placing hundreds of EJ-focused federal employees on leave, and dissolving EJ-dedicated agency offices.

In addition, on April 8, Trump issued an executive order calling for the U.S. attorney general to halt the enforcement of state laws that inhibit the identification, development and use of domestic energy resources. The order, described as "protecting American energy from state overreach," directs a federal review of state laws that address climate change, environmental, social and governance concerns, and environmental justice — thus putting myriad state initiatives squarely in its crosshairs.

Such dramatic swings of the political pendulum, coupled with an increasingly complex regulatory landscape that varies significantly from state to state, present significant challenges for regulated entities with operations across the country.

Moreover, efforts by regulated entities to accommodate the new federal policy by abandoning or walking back from previous mandatory or voluntary environmental justice commitments may now draw hearty opposition from a growing, empowered coalition of local EJ and tribal advocacy organizations — many of whom are supported by large, well-funded national nongovernmental organizations.



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This new landscape creates difficult questions for companies on how best to avoid friction with federal policy, navigate state compliance obligations and maintain important stakeholder relationships with communities. In this article, we discuss these recent developments, related risks and hurdles, and risk mitigation strategies.

Trends in State Environmental Justice Legislation

Many states have expanded environmental justice-focused legal requirements, programs and initiatives in recent years. Two categories of such efforts present the most significant obligations for regulated entities, and are most likely to face federal challenge.

Permitting and Land Use

In 2020, New Jersey enacted its Environmental Justice Law, which incorporated concrete EJ-focused requirements for certain facilities located within "overburdened communities," as defined by race, income and other criteria.

Under the law, these entities — including, among others, major sources of air pollution, resource recovery facilities or incinerators, solid waste facilities, large recycling facilities and landfills — must prepare an environmental justice impact statement that the New Jersey Department of Environmental Protection must consider as part of every application for new permits, renewals and expansions.

If an EJIS identifies an adverse, disproportionate impact on an overburdened community, the NJDEP can deny or apply conditions for a new permit on that basis alone. For permit renewals or expansions, the department can require conditions to mitigate the identified impacts.

Several other states have followed New Jersey's lead, including California, Colorado, Massachusetts, Minnesota, New York and Washington. The laws in those states similarly mandate that regulators consider potential impacts on disadvantaged communities — identified by race, income and other criteria — in agency decision-making involving permitting and land use, and require enhanced community engagement by regulated entities and regulators.

Pennsylvania may be the next state in line, with H.B. 109 — providing for issuance of permits in environmental justice areas — currently moving with some momentum through the state legislature.

A technology-specific approach arose in 2024 with Illinois' SAFE Carbon Capture and Sequestration Act, which established a statewide regulatory framework for CCS permitting. The law requires the Illinois Environmental Protection Agency to submit a report to the governor by Dec. 1, 2028, reviewing progress on CCS projects in the state, including an environmental justice analysis.

The analysis must include, at minimum:

- An assessment of projects that present potential impacts on "environmental justice communities and economically disadvantaged rural communities";
- An explanation of how public participation processes associated with permitting of those projects provides transparency and meaningful participation for environmental

justice communities, rural communities, minority populations, low-income populations, tribes or indigenous peoples; and

- Options for state agencies and decision-makers to improve environmental, public health and economic protections for environmental justice communities and economically disadvantaged rural communities in permitting and regulatory enforcement of CCS permit provisions.

Climate and Equitable Benefit Distribution

Beyond permitting, several states have enacted laws that include targeted benefit for historically overburdened communities.

For example, New York's Climate Leadership and Community Protection Act, passed in 2019, requires the state to reduce economywide greenhouse gas emissions to 40% below 1990 levels by 2030, and 85% by 2050. Alongside those climate goals, the law requires that the state invest 40% of its climate and energy funding in disadvantaged communities.

Similarly, in 2022, Maryland passed the Climate Solutions Now Act, which pairs decarbonization goals with requirements that regulators adopt a methodology to identify communities disproportionately affected by climate impacts, develop strategies to mitigate impacts on those communities, and establish funding goals to benefit those communities.

Similar laws are in place in other states, including California, Colorado and Oregon.

Notably, Illinois' SAFE Carbon Capture and Sequestration Act mentioned above also includes among its components a benefit distribution element through the creation of the environmental justice grant fund.

The fund is to be used by the state to make grants to eligible entities, including local governments, community-based nonprofits and eligible organizations representing areas of environmental justice concern, to fund environmental projects benefiting areas of the state that are disproportionately burdened by environmental harms.

The fund receives 24% of the money collected annually in the state's Carbon Dioxide Sequestration Administrative Fund, a separate account that includes fees, fines and penalties collected under the act.

In many of the aforementioned states, legislative developments occurred alongside expansion of state-level resources, including new environmental justice offices, mapping tools, task forces and guidance on effective engagement.

These efforts are not just taking place at the state level. Municipalities such as New York City have taken measures to incorporate environmental justice into local land use, climate and environmental decision-making.

In 2017, the city council passed Local Laws 60 and 64 requiring assessment of environmental equity issues, creation of a mapping tool and development of a plan to incorporate EJ considerations into city decision-making.

In addition, in many states without environmental justice laws, county and other local enforcement entities have challenged state decisions for failing to adequately consider or

engage with disadvantaged communities, adding further layers of complexity and accountability.

For example, in Texas, the Environmental Division of the Harris County Attorney's Office regularly opposes and comments on environmental permit applications and decisions that it views as detrimental to environmental justice. While the success of such claims varies, they present legal and reputational vulnerabilities for developers and their projects, even in the absence of EJ laws and requirements.

Community and NGO Opposition

Over the last four years, the Biden administration also took great measures to elevate, empower and direct funding to community organizations advancing and promoting environmental justice goals.

President Joe Biden issued an executive order establishing the White House Environmental Justice Advisory Council, which amplified the voices of nearly 30 representatives of community organizations by creating a vehicle for them to provide direct EJ advice to the administration.

In addition, the Inflation Reduction Act directed significant resources to environmental justice-focused organizations for capacity building, training and expansion, which in turn facilitated the creation of new regional and national partnerships. To match pace with federal opportunities, many of these local organizations also built out advocacy and litigation capabilities, opened new offices, hired new leadership and collaborated more extensively with national NGOs.

This galvanized advocacy community may present formidable opposition to federal and state actions that stakeholders believe have not properly taken into account the interests of and impacts on disadvantaged communities, even in states without environmental justice laws. Recent cases suggest that, while EJ advocates may not always prevail, their arguments can gain traction and political support.

For example, in *Rise St. James v. Louisiana Department of Environmental Quality*, a coalition of community organizations and NGOs, including Rise St. James and the Sierra Club, challenged the Louisiana Department of Environmental Quality's approval of 15 environmental permits for a proposed chemical complex in St. James Parish.

The case was filed in Louisiana's 19th Judicial District in February 2020. The plaintiffs relied on the Louisiana Constitution's public trust doctrine, which requires environmental protection "insofar as possible and consistent with the health, safety, and welfare of the people."

The trial court reversed the LDEQ's decision to issue the permits, and further vacated the permits, which the department promptly appealed. While the Louisiana First Circuit Court of Appeal ultimately reversed the judgment of the trial court and reinstated the permits in January 2024, it also concluded that an environmental justice analysis was required under the public trust doctrine.

As a result, the court provided an avenue for EJ advocates to challenge future permitting decisions in the state.

In March 2023, several environmental justice community organizations — including Rise St.

James — filed *Inclusive Louisiana. v. St. James Parish* in the U.S. District Court for the Eastern District of Louisiana. The complaint includes constitutional and statutory civil rights claims against St. James Parish for having directed industrial facility development to minority communities, and for having authorized development that would desecrate, destroy and restrict access to cemeteries of their enslaved ancestors.

Although the district court dismissed the case, the U.S. Court of Appeals for the Fifth Circuit reversed and remanded on procedural grounds last month, allowing the plaintiff organizations to proceed with their lawsuit. The plaintiffs are represented by the Center for Constitutional Rights and the Tulane University Environmental Law Clinic — highlighting the power of such partnerships to bring novel approaches to environmental justice litigation and advocacy.

Implications for Companies with EJ-Focused Activities

For companies with environmental justice-related programs, policies and investments, these changes will inevitably affect enterprisewide compliance strategies and operational considerations in high-risk jurisdictions.

Where facilities and other operations are located in states, counties and municipalities with EJ-focused laws and priorities, companies can expect enforcement officials to continue their enforcement of those requirements.

Indeed, with the Trump administration's avowed intent to walk away from any federal enforcement, some state and local jurisdictions may decide to double down and move more aggressively in this space.

At the same time, the U.S. Department of Justice — following the recent executive order's specific direction that the attorney general "halt" such state and local enforcement — is likely to take significant and targeted action, which may include litigation, enforcement and withdrawal of federal funding. The potential for massive uncertainty, and the impact on activities critical to operational continuity, is both obvious and challenging.

Review, Reevaluate and Right-Size for Risk Mitigation

Corporate environmental justice programs and risk assessments that relied on now-revoked federal tools and guidance should embark on speedy and thorough reevaluation, including consideration of state-based and customized tools where federal resources — such as the U.S. Environmental Protection Agency's EJScreen — are no longer available.

In anticipation of federal and state clashes, regulated entities should also consider privileged, internal audits to determine how federal policy shifts, enforcement and litigation could reshape their compliance obligations.

In particular, the DOJ and other federal entities are like to focus on and challenge the use of race as a criterion to identify environmental justice communities — especially because that was an element of the Biden administration's Climate and Economic Justice Screening Tool.

To that end, entities should consider how state compliance might change if the Trump administration were to succeed in that approach.

Continued Communication — Internally and Externally

As entities or state and local governments adjust, accommodate or resist the new federal attitude in the coming months, companies will likely face increased scrutiny by community organizations, environmental NGOs and investors interested in accountability and hoping to push back.

Beyond baseline assurance of compliance with environmental and environmental justice laws, active and meaningful engagement with long-standing stakeholders will be particularly important for understanding community priorities and developing long-term trust. Moreover, internal alignment on community-tailored communications, from the C-suite to the facility level, can help to mitigate risk of confusion and misalignment — both within the organization and with external stakeholders.

Overall, while the rollback of federal environmental justice authorities, policies and initiatives has already begun to fundamentally reshape the regulatory environment, it has not eliminated the need for close consideration of EJ-related compliance obligations and associated risks — particularly for companies in jurisdictions with EJ laws.

Organizations in regulated industries with large U.S. industrial footprints that are most often subject to state environmental justice laws — such as those in the energy, manufacturing and chemical sectors — will benefit from a robust assessment of existing compliance obligations to understand how best to address near-term uncertainty, as well as consider long-term implications that will extend well beyond the next four years.

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[1] While the definition of "environmental justice" varies widely depending on jurisdiction, the definition used in New Jersey is similar to prior federal and other existing state definitions: "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." See New Jersey Department of Environmental Protection, Glossary of Environmental Justice Terms, available at <https://dep.nj.gov/ej/glossary/>.