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Environmental Protection in the Trump Era

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Environmental Protection in the Trump Era.

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Environmental Justice in the Trump Era

The Trump Administration's actions on numerous fronts dealing with air, water, and soil pollution have significant implications for environmental justice (EJ) communities, defined as low-income, communities of color, and/or indigenous groups. A record year for natural disasters compounded these impacts. Declining EPA resources and a major shift in priorities from regulation and enforcement to deregulation and increased deference to states also present challenges in the environmental justice sphere. New limitations in the federal approach to climate change and resilience planning also have important EJ implications, as climate change is projected to be particularly impactful for already vulnerable communities.

Background.

- Rooted in the civil rights movement, and important social activism like the 1968 Memphis Sanitation Strike led by Dr. Martin Luther King Jr., many believe environmental justice was born in the 1970s in [Warren County, N.C.](#), where citizens fought back against a PCB dump, culminating in the governor of the state heeding the citizenry's call to prevent expansion of the dump.
- President George H.W. Bush formed the precursor to the current EPA Office of Environmental Justice (OEJ)—the Office of Environmental Equity—in 1992.
- President Bill Clinton's 1994 [Executive Order 12898](#) directed each executive branch agency to promote nondiscrimination in federal programs that affect human health and environment, emphasizing impacts on minority and low-income populations.
- George W. Bush's EPA reaffirmed the commitment to EJ in a 2001 memo.
- President Obama, in a [memo](#) in 2011, expanded federal focus on EJ and Executive Order 12898.
- EPA's OEJ, the National Environmental Justice Advisory Council ([NEJAC](#)), and the Federal Interagency Working Group on Environmental Justice ([IWG](#))—composed of the heads of each federal agency—work together to ensure progress for EJ communities.

Areas to Watch

- For EJ considerations, the continuing battle over the federal budget bears watching. Other indicators of executive branch priorities include whether agencies update and publish their environmental justice reports for public comment, as well as upcoming appointments.
- The D.C. Circuit, which has final say over most federal regulations, will continue to play a huge role in determining the effectiveness of the Administration's efforts to roll back regulations. States, cities, nonprofits, and corporations are also likely to continue to step up their efforts for EJ communities in the absence of federal action.
- Bipartisan Legislation
 - [S.692 – Water Infrastructure Flexibility Act \(H.R. 1971; H.R. 2355\)](#)
 - [H.R. 4177 – PREPARE Act](#)

- Unlike other areas of environmental law, [environmental justice](#) does not have a centralized location within one major piece of legislation, but is found in many laws, regulations, and agency guidelines throughout the federal government.

Discussion.

Disproportionate Impacts. Recent reports show that communities of color are still disproportionately exposed to pollution and polluting industries, and the [effects of climate change](#). While non-EJ communities have received infrastructure upgrades and mitigation measures, resulting in cleaner air, water, and land, progress in EJ communities continues to lag behind. A recent [report](#) indicates that depression linked to anxiety over environmental quality and the effects of climate change hits low-income communities and women the hardest.

Natural Disasters. Coastal communities across the country are experiencing vanishing coastlines, most notably in [Louisiana](#) where Gov. John Bel Edwards has declared “a state of crisis” and litigation continues to compel industry to pay for restoration efforts. Natural disasters across the country made [2017 the most expensive year](#) on record for recovery, amounting to over \$300 billion, according to NOAA; the Congressional Budget Office [determined](#) that by 2075, five times the number of U.S. residents currently at risk from destructive hurricanes will be substantially at risk. The West Coast experienced record wildfires exacerbated by a climate-induced drought, costing billions of dollars for first responders, rebuilding, and lost productivity, followed by unprecedented mudslides that [cost many more lives](#). EJ communities face the worst impacts because they do not have the resources to move or flee, and their protective infrastructure is often inadequate.

Given the fact that hazardous sites are most likely to be located in EJ communities, these communities bear the brunt of the harm when disasters strike. With over [2,500 sites](#) managing toxic chemicals in flood-prone areas nationwide, and [327 Superfund sites](#) in floodplains, the risks for adjacent neighborhoods are increasing. Florida, Houston, and Puerto Rico saw storm damage to Superfund sites, landfills, coal ash and mine tailing deposits, storage tanks, and retention ponds, leading to further contamination of areas.¹ The federal government has yet to

1. SkyTruth [Spill Tracker](#) has been keeping track of these sites online.

Areas to Watch

- [H.R. 1675—National Landslide Preparedness Act](#)

EJ Legal Documents

- [Plan EJ 2014 Legal Tools \(EPA 2014\)](#)
- [Opportunities for Advancing Environmental Justice \(ELI 2001\)](#)
- [Charles Lee, *Toxic Waste and Race in the United States* \(1987\)](#)
- [Charles Lee, Vernice Miller-Travis, Isaiah Madison, *The Principles of Environmental Justice* \(1992\)](#)

EJ Resources

- [EJSCREEN](#)
- [NPL List](#)
- [CA Envirostor](#)

Developments That Advance Environmental Justice

- Environmental Justice Act of 2017 introduced in both houses ([S. 1996](#); [H.R. 4114](#)).
- Abrams Environmental Law Clinic at University of Chicago Law School obtained a major [settlement](#) against U.S. Steel for polluting waterways in Indiana.
- EJ Legislation passed in:
 - [Connecticut](#)
 - [Florida](#)
 - [Hawaii](#)

establish a plan for addressing the risks these disasters pose to surrounding communities.

Federal Budget ([see also Chapter 10](#)). In President Trump’s recent Office of Management and Budget (OMB) release of [An American Budget: Fiscal Year 2019](#), EPA would receive **a proposed 23.2% cut, totaling a potential \$2.6 billion reduction.**

A year ago, President Trump’s proposed FY 2018 budget called for a similar cut in EPA funding, including eliminating OEJ. The budget passed out of the House Subcommittee on Interior and Environment included less-drastic cuts to EPA than the White House proposal, but still included a reduction of 6.6%, or \$528 million.² In the House budget, OEJ was to survive, but would suffer a budget cut of over \$1 million. The House called for reductions in funding for enforcement ([see Chapter 9](#)) and programs around clean air, clean water, and lead hazard reduction. That budget also would have cut millions from EPA watersheds programs.

The Senate Subcommittee held a hearing on the EPA budget, and proposed a total reduction of \$149.5 million, an even [less-drastic cut](#) to the FY 2017 total. **Subsequently, on March 28, 2018, the Consolidated Appropriations Act was signed into law**, after Congress eliminated nearly all previously proposed budget cuts and extended or increased previous funding levels across the federal government.

Executive Orders ([see also Chapter 1](#)). [EO 13766](#) on “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects” attempts to shorten the environmental impact assessment process ([see Chapter 4](#)). The **EJ implications of a truncated review process could be significant** if projects do not adequately manage risk or address the particular needs of communities. If expedited approvals result in poorly planned projects that threaten damages to person or property, citizen suits by communities demanding full NEPA compliance will increase.

[EO 13795](#) moved to abolish safety requirements placed on offshore drilling after the 2010 BP Gulf of Mexico oil spill, in order to start “the process of opening offshore areas” to energy exploration ([see Chapter 6](#)). A specific **EJ concern is potential revocation of the [Well Control Rule](#)**, which was promulgated to reduce the likelihood of the kind of catastrophic equipment failure seen in the Gulf, where vulnerable communities absorbed much of the spill damage and faced catastrophic and ongoing economic, environmental, and health challenges. Notably, the Order **highlights costs to oil and gas producers, and does not speak to impacts to vulnerable coastal communities.**

[EO 13817](#), like many of the Administration’s actions around public lands, seeks to emphasize the exploration and extraction of domestic minerals in order to reduce the financial and national security vulnerabilities of a possible disruption in supply. The EJ consequences of increased mining and resource extraction lie primarily in the possibility of land, water, and air contamination caused by typical mining processes. While the Order does address the vulnerabilities caused by importation of these minerals, it does not mention the impact that increased mineral extractions could have on already-vulnerable communities. ([See Chapter 5](#) for more on the reduction of National Monuments.)

Areas to Watch

- [Illinois](#)
- [Maryland](#)
- [New York](#)
- [Oregon](#)

2. H.R. 3354, 115th Cong. (2017); H.R. Rep. No. 115-238 (2017).

Pipelines. The transport of oil and gas across the nation has come into focus in recent years due to the controversial Keystone XL (Keystone) and Dakota Access (DAPL) Pipelines. Due to pressure from protesters, civil rights activists, and Native American tribes, underscored by numerous lawsuits, the Keystone pipeline is [still in limbo](#). Several presidential and secretarial **orders directed federal agencies to fast-track permits related to pipelines, overturning an Obama Administration denial of Keystone** based on risks found during the original environmental review ([see Chapter 4](#)). Due to activism in and out of the courtroom, the **delays have reportedly caused the market opportunity to shrink** and the [developer to reconsider](#).

DAPL, on the other hand, was completed and operational by June 1, 2017, despite pushback from the local communities and judicial intervention in the *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* case. There, the court [ordered expanded environmental review](#) and heard arguments to determine whether the pipeline should be shut down during the period of the review. [Most expect](#) the expanded review period to take many months and up to several years. Also noteworthy is the significant divestment movement, with a number of major universities, pension funds, and corporations having [pulled money out](#) of these projects.

A number of other pipeline projects across the country are also drawing opposition. In Pennsylvania, the Atlantic Sunrise pipeline currently faces a legal challenge [centered on religious grounds](#); a district court has dismissed the suit for reasons unrelated to the religious claims, and it awaits hearing in appellate court. The Bayou Bridge pipeline in southern Louisiana also faces legal challenges, stemming from [purely environmental](#) as well as [environmental justice](#) issues; a federal judge [has ordered](#) a halt in the pipeline's construction. [See Appendix](#) below for additional information about pipeline construction across the country.

Climate Justice. The Administration's **decision to withdraw the United States from the Paris Agreement** ([see Chapter 7](#)) has several long-term EJ implications. The impoverished suffer most from a changing climate, in the form of reduced access to clean water, arable land, and nutrition. Rising temperatures increase the frequency of extreme heat events and flooding, both of which hit lower socioeconomic classes hardest. Those with more wealth can afford air conditioning, flood insurance, or to relocate altogether; the **poor are often forced to stay in dangerous conditions for lack of resources**. EPA recently [lowered its estimate of the social cost of carbon](#) ([see Chapter 1](#)) from \$42 per ton to \$1 per ton, which can be expected to diminish climate mitigation measures and reduce government focus on climate adaptation and resilience efforts to protect EJ and other communities.

Signed in March of 2017, [Executive Order 13783](#) **rescinded six Obama Administration executive orders focused on limiting the worst impacts of climate change and reducing carbon emissions**, as well as a Council on Environmental Quality guidance to federal agencies on how to include climate change in environmental impact statements under NEPA. The absence of federal planning around climate change due to these rescissions raises questions about the resilience and preparedness of EJ communities in the face of a changing climate.

In Oregon, a collection of environmental activists and individual youth filed a lawsuit in 2015 against the United States, alleging that the federal government had violated a public trust by not taking more decisive action against fossil fuel development and consumption. The suit has overcome numerous standing challenges filed by both the federal government and intervening energy companies at the district court level, and the U.S. Court of Appeals for the Ninth Circuit [has ruled](#) that it may proceed to trial. Similar lawsuits have been filed in [Alaska](#), [California](#), New

England, [New York](#), along with many more suits by environmentalists, citizen advocacy groups, and state attorneys general demanding action to address climate risks and to fund mitigation and adaptation projects.

Safe Drinking Water. The ability of state and local governments and public utilities to provide **safe drinking water has become a major national question** as numerous crises have come to light. ([See Appendix.](#)) In 2014, Flint, Michigan, experienced a [drinking water crisis](#) that exposed thousands of residents, including 9,000 children, to dangerous levels of lead and other contaminants. Four years later, Flint officials [still do not recommend](#) drinking unfiltered tap water until water line replacements are complete, and until water consistently tests within legal levels for lead. Administrator Pruitt has commented that “the people of Flint and all Americans deserve a more responsive federal government,” but few initiatives or bills have been introduced relating to this challenge. Although EPA under the Obama Administration [proposed a series of changes](#) to the Lead and Copper Rule, which regulates the type of lines at issue in Flint, the Trump EPA has thus far [delayed the implementation](#) of these changes. Recently, EPA [requested public comment](#) on potential revisions to the rule, signaling that changes may be in motion.

Environmental Protection Agency. As discussed throughout, **EPA under Administrator Scott Pruitt has prioritized rolling back, suspending, or delaying Obama-era rules** on the environment. Of the 131 deregulatory initiatives undertaken by the Trump Administration, [43 fell under EPA jurisdiction](#). Many of these rules directly or indirectly affect EJ communities.

Two of Administrator Pruitt’s **most significant moves, rolling back the Clean Water Rule and Clean Power Plan** ([see Chapter 8](#)) have implications for communities already suffering from disproportionate rates of respiratory illness and lack of access to clean water. The Clean Water Rule was intended to provide protection for source waters for over 100 million Americans, [according to an Obama-era EPA study](#). The [Obama Administration claimed](#) that the co-benefits of the Clean Power Plan would have avoided up to 3,600 premature deaths, and led to 90,000 fewer asthma attacks in children.

Administrator Pruitt **also attempted to delay a final Clean Air Act rule on methane** via a 90-day moratorium, later extended to two years, and argued his actions were not subject to court review ([see Chapter 8](#)). In a 2-to-1 decision, the **United States Court of Appeals** for the District of Columbia Circuit [ruled that the agency’s decision was “arbitrary and capricious”](#) and that EPA lacked the authority to block the rule. Methane emissions are greenhouse gases (GHGs) regarded as far more potent than carbon dioxide as a driver of climate change. Methane also is an asphyxiant that can contribute to respiratory and other health issues for communities downwind of operations. EPA has likewise moved to slow rules concerning ozone, indoor radon, auto emissions, and other air pollutants, and issued a [guidance memo](#) withdrawing the “once in always in” policy for classifying major sources of air pollution.

Superfund, the federal program tasked with managing and remediating the nation’s most toxic sites, is slated for an increase in funding, as Administrator Pruitt has made accelerating remedies and moving sites off the **National Priorities List** (NPL) the cornerstone of his “back to basics” strategy at EPA. He has prioritized brownfield programs, while [increasing his office’s oversight](#) of any Superfund project costing over \$50 million, to “streamline and improve efficiency.” While the reforms and focus on Superfund may advance progress on legacy sites in EJ communities, a number of worries are being expressed, for example, **whether the “efficiency” objective will result in**

lower cleanup standards and residual human health risks, and whether the speed imperative will result in some sites being **removed from the NPL** without appropriate and necessary remediation.

Administrator Pruitt created a list of 21 priority Superfund sites for “immediate, intense action” as part of his [Superfund Task Force](#). This has been met with questions within the EJ community about the fate of the remaining sites on the NPL, many of which are located in EJ communities, and whether those sites will also be addressed, or rather will be “**mothballed**,” the industry term for properties that remain fallow and contaminated.

Chemical Safety. EPA’s chemical safety program is the preventative counterpart to Superfund, intended to provide assurance to EJ and other communities that chemicals in commerce are safe and not contributing to significant risk scenarios. During the first year of the Trump Administration, EPA faced significant challenges in its implementation of the Toxic Substances Control Act (TSCA), as revised by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.³ EPA’s initial suite of framework implementation rules (i.e., its prioritization, risk evaluation, and inventory rules) were promulgated in June 2017 and promptly challenged by a number of environmental groups. The litigation over them is currently pending.

EPA also had to address significant changes in the provisions of TSCA governing the Agency’s review and evaluation of new chemicals that manufacturers are introducing into commerce. In contrast to the prior law, the Lautenberg Act’s amendments to TSCA require EPA to make affirmative findings regarding the safety of chemicals within specified time frames from the submission of notifications from manufacturers. EPA has struggled to meet those deadlines, and has recently been working on streamlining measures to eliminate the new chemicals backlog that has emerged. This has produced worries about the potential for shortcuts to be taken in the effort to expedite the process.

With respect to pesticides, one of the Administrator’s most significant decisions was to reverse course on EPA’s proposed action regarding chlorpyrifos, which would have led to a ban of the pesticide. The Administrator’s change in direction is now the subject of a challenge from environmental groups. Also of significance were EPA’s actions on rules promulgated under the previous Administration regarding the certification and training of applicators of restricted use pesticides (the most dangerous chemicals) and worker protection standards. Administrator Pruitt delayed the effective date of the certification and training rule, which was successfully challenged in court by farmworker and health groups. EPA is now in the process of seeking to make modifications to those rules.

Supplemental Environmental Projects. Attorney General Jeff Sessions issued a [memorandum](#) in June curtailing the use of certain types of “supplemental environmental projects” (SEPs) ([see Chapter 9](#)). **SEPs allow companies to creatively settle cases** by including environmental projects to offset penalty claims, and EJ communities have often been the beneficiaries. The Sessions memorandum precludes payments to any nongovernmental organization that is not a party to the dispute for purposes of administering SEPs.

Precluding penalty mitigation projects of this kind may mean that defendants will be less likely to fund public health and environmental protection efforts in response to enforcement actions, potentially moving financial resources from on-the-ground EJ projects to government coffers.

3. Frank R. Lautenberg Chemical Safety for the 21st Century Act.

Administrator Pruitt also has [voiced concerns about](#) the practice of utilizing SEPs to remedy environmental violations; however, EPA has yet to issue an official stance on their viability.⁴

Congressional Action. As discussed in detail in Chapter 3, congressional Republicans and the Administration **rolled back several Obama-era environmental regulations** via the Congressional Review Act (CRA). Two of the rules with EJ implications were the Stream Protection Rule, which [was intended to protect](#) an additional 6,000 miles of streams and 52,000 acres of forest near mining communities over the next two decades, and the Bureau of Land Management’s “Planning 2.0” Rule, designed to empower BLM to more readily address changing conditions on public lands caused by climate change. By contrast, the Senate, by a vote of 51-to-49, [blocked an attempt](#) to use the CRA to **repeal the BLM Waste Prevention Rule**, which restricts methane emissions from drilling operations on public lands.

Public Lands. In July of 2017, the Department of the Interior submitted a proposed rule governing hydraulic fracturing on public lands.⁵ This **new rule would effectively rescind the safety standards** established by a 2015 Obama Administration rule that intended to protect nearby communities from pollution of drinking water. Overall, Secretary of the Interior Ryan Zinke has prioritized opportunities for the oil and gas industry to drill, frack, and mine on the nation’s public and tribal lands, [moving to speed up permitting](#) and [announcing expansions](#) of areas for development. This has drawn resistance from environmental groups, conservationists, and Native American tribes.

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4. The [2015 memorandum](#) updating the Agency’s general SEP policy remains the most recent policy document on the EPA website.
 5. Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule, 82 Fed. Reg. 34464 (proposed July 25, 2017) (to be codified at 43 C.F.R. pt. 3160).