

ENVIRONMENTAL JUSTICE ENFORCEMENT REFERENCE DOCUMENT

Recent EJ Compliance and Enforcement Activity

Regulators, local officials, neighbors, and environmental groups have utilized environmental justice initiatives and public participation in recent permitting and enforcement actions. These enforcement activities may not qualify as legal “precedent,” but they can provide a glimpse into how agencies are reframing environmental compliance and enforcement through an EJ lens. We share some comparison analysis of this selection of activity in a table after the activity summaries.

Oil & Gas – Refineries, Pipelines and Terminals

EPA Region 2 forced the [Limetree Bay refinery to shut down](#) for 60 days citing environmental justice concerns.

The Limetree Bay Refinery experience four release incidents between February and May 2021. All four incidents resulting in significant harm to members of the community and the surrounding environment including health effects, affected drinking water, and property damage. The incidents included air releases of hydrocarbons and harmful gases.

May 2021, EPA Region 2 published the news release, “[EPA Uses Emergency Powers to Protect St. Croix Communities and Orders Limetree Bay Refinery to Pause Operations](#).” The release states, “Limetree Bay is located in a community that is disproportionately affected by environmental burdens and its repeated incidents raise significant environmental justice concerns, which are a priority for EPA.”

“This already overburdened community has suffered through at least four recent incidents that have occurred at the facility, and each had an immediate and significant health impact on people and their property,” EPA Administrator [Michael Regan said](#). “EPA will not hesitate to use its authority to enforce the law and protect people from dangerous pollution where they work, live, and play.”

The U.S. 4th Circuit Court of Appeals [struck down a Virginia Department of Environmental Quality permit](#) for a pipeline compressor station largely on the grounds that the state had failed to adequately consider environmental justice concerns in its decision-making.

In January 2020, the U.S. 4th Circuit Court of Appeals [struck down the permit](#) for the Atlantic Coast Pipeline largely on the grounds that the state had failed to adequately consider environmental justice concerns in its decision-making. “Environmental justice is not merely a box to be checked,” the court admonished Virginia officials.

The Virginia Council on Environmental Justice is [asking Gov. Ralph Northam](#) to issue a moratorium on all new fossil fuel projects and permits in the state. The April 7 letter signed by 12 members of the 21-person advisory body, the council argues that a ban is necessary “to avoid future devastation” and calls on Northam “to fulfill your climate and environmental justice commitments.”

[The Title V air permit for a St. Louis fuel terminal is under review by EPA following EPA’s determination the Missouri Department of Natural Resources \(MoDNR\) is preliminarily out of compliance with requirements for setting up nondiscrimination programs.](#)

According to local news sources, EPA is reviewing a permit that DNR issued to Kinder Morgan Transmix to operate a facility to separate fuel products back into usable gasoline. The plant is on the Mississippi River near several predominantly Black South St. Louis neighborhoods. The permit requires self-reporting only if emission limits are exceeded. The Great Rivers Environmental Law Center submitted comments arguing that MoDNR failed to follow federal rules and asked the Agency to study the "disparate impacts" of air pollution on the heavily minority communities.

MoDNR said such analyses were not required, prompting the Great Rivers group to file a complaint with EPA’s rights office arguing the low-income and minority residents near the facility would be “disproportionately exposed” to air pollution. It’s notable that this was not the first permit to which the Great Rivers group provided public comment. Their history of providing environmental justice comments on MoDNR permits, and the subsequent repeated non-engagement by the agency on the topic, resulted in the escalation of the situation to the EPA complaint.

The permit inspections of the site revealed no findings. Given the situation, it could be argued that the timing of the interactions between the community groups, the state agency, and the federal agency just happened to catch Kinder Morgan in the middle – they did not necessarily bring this on themselves.

In the first half of [the investigation](#), the EPA preliminary findings were against the MoDNR on many counts of lacking or unacceptable agency policies, procedures, and programs. The second half of the EPA investigation will focus more specifically on the MoDNR’s decision to award the Kinder Morgan permit and whether it discriminated against residents. Until those findings are released, the site permit is in legal limbo.

[A Colorado refinery located in an economically disadvantaged area recently committed to investing \\$12 million to install an automatic shutdown system for its catalytic cracking unit.](#)

According to The Colorado Sun, Suncor’s implementation plan says that its catalytic crackers use high pressure and catalysts like clay and sand to make gasoline. If the pressure is not right, catalyst escapes and causes white or white-yellow dust [that in past events has coated nearby cars, lawns and homes](#). Suncor has said the substance is not toxic. The required upgrades since dust-release events in December 2019 and March 2020 should help prevent such releases, [Suncor said](#).

The state said, Suncor will spend \$12 million on a new automatic shutdown system by December for a catalytic cracking unit that makes gasoline. The state’s press release said Suncor will also upgrade the shutdown system on another cracking unit by the end of June.

HEADQUARTERS

State health officials praised the plan but also said they would keep watching Suncor, whose operations in recent years have prompted repeated neighborhood protests, environmental justice demands and new air monitoring proposals at the Legislature.

Recycling

EPA Region 5 and the Chicago Mayor requested the suspension of the Chicago Department of Public Health (CDPH) review of a metal recycling plant's permit and recommended an environmental justice analysis be conducted including a health impact assessment and cumulative impact analysis.

"Prior to reaching a decision on the permit, [U.S. EPA suggests](#) that the City complete an environmental justice analysis, such as a Health Impact Assessment, to meaningfully consider the aggregate potential health effects of the proposed RMG facility on the southeast area of Chicago. This would include consideration of not only a robust analysis of ambient air quality data from Chicago's southeast side, compared with other parts of the city, but also potential impacts from other pathways of exposure," EPA Administrator Michael Regan says in [a May 7 letter](#) to Chicago Mayor Lori Lightfoot (D).

Lightfoot in a May 7 statement agrees to suspend review of the permit. "As a direct result of [Regan's] request, today, I directed the Chicago Department of Public Health (CDPH) to initiate an environmental study recommended by the U.S. EPA and to delay a final decision on RMG's permit application seeking to expand its metal recycling facility operated on the Southeast Side, pending completion of this further analysis," [she says](#).

Paper Mills

EPA's External Civil Rights Compliance Office (ECRCO) entered into an agreement with Arkansas DEQ related to alleged DEQ discrimination against a predominantly African American community associated with an Arkansas paper mill's NPDES, CWA testing, RCRA waste management, NESHAP performance testing, and RMP procedures.

EPA's [ECRCO is investigating](#) whether the DEQ discriminated against the predominately African American community of West Crossett, Arkansas, on the bases of race and/or color in violation of Title VI of the Civil Rights Act, and EPA's implementing regulation related to Georgia-Pacific Crossett's paper operations related to the Clean Waters Act.

Public Works Projects - Infrastructure

EPA Region 9 blocked approval of a long-planned expansion of the I-710 freeway in Southern California by declining to approve officials' request for a streamlined variation from the usual project-level transportation conformity analysis processes and requirements in part because of concerns about the pollution effects on local communities.

"EPA recognizes the collective challenges to protecting human health while delivering transportation projects within the I-710 Corridor, an area with communities already overburdened by existing goods movement and industry in an area with the worst air quality in the United States, including some of the highest [fine

HEADQUARTERS

particulate matter (PM_{2.5})] levels in the country,” Elizabeth Adams, the region’s air & radiation division director, said in a May 4 letter to the California Transportation Department and the Los Angeles County Metropolitan Transportation Authority.

She added that the agency “finds there are significant issues” with the plan to expand the freeway “that are in conflict with the Clean Air Act and transportation conformity regulation,” which generally require new transportation projects demonstrate they meet local air quality limits.

The agency “does not accept the proposal that the I-710 Clean Truck Program eliminates the need for a PM hotspot analysis” for the project, she added.

Adams is also pressing the agencies to consider cleaner alternatives, writing, “EPA continues to support efforts to increase clean transportation along the corridor and we remain committed to partnering with you as you evaluate pathways to advance transportation solutions while being protective of human health. I understand that our staff are already in dialogue on possible alternatives.”

[DOT suspended an I-45 expansion project in Houston due to disproportionate impact it will have on Hispanic and African American communities.](#)

In a similar vein, the U.S. Department of Transportation (DOT) has stopped a Texas highway expansion project for potential civil rights and environmental justice issues, with Deputy Transportation Secretary Polly Trottenberg calling the project “a massive highway expansion that threatens to remove homes and businesses from a minority neighborhood” as one that “takes us in the wrong direction in terms of climate goals,” according to [Politico](#).

Texas DOT did not adequately address community concerns in its environmental impact analysis. DOT has asked Texas to pause work while the federal review is ongoing, and DOT could order Texas to redo its analysis or fully reject the project under civil rights law, [Politico says](#), noting that Trottenberg’s May 7 comments suggest the agency is not likely to let Texas off the hook.

HEADQUARTERS

What Can We Learn from Recent Enforcement Actions

Table 1 - EJ Enforcement Activity Comparison

	VI Refinery	VA Pipeline Compressor Station	MO Fuel Terminal	CO Refinery	IL Metal Recycling	AR Paper Mill	CA Highway Expansion	TX Highway Expansion
Incident or Investigation	X			X				
Release Incident	X			X				
Retroactive Action		X	X			X		
State/Local vs. Federal Agencies		X	X		X	X		
New Permit / Licensing		X			X		X	X
ECRCO Involvement			X		X	X		X
Media Involved	Air	Air	Air	Air	Air	Water	Air	Air

Table 1 shows and analysis of recent EJ enforcement actions and their defining elements. While every enforcement or compliance situation is unique, this perspective allowed us to identify some interesting trends that can inform the preparation for EJ risks.

1. An environmental incident or EPA investigation, especially a release incident, is more likely to result in an EJ analysis on the impact to the surrounding community. It may be wise to consider EJ implications for any environmental incidents as EPA is now considering EJ as part of its reviews per the agency's initiatives.
2. There is a pattern of EJ focus in situations where federal and state agencies are not aligned in the scope and depth of EJ consideration for permit renewal. This has occurred repeatedly in situations where a previous permit or action was allowed by a state regulator, but after litigation or complaint, the permit/action was questioned at the federal level. This indicates that it is imperative to know how closely aligned your state regulations are with federal EJ requirements, especially if a state permit is up for renewal soon. Preparation for additional scrutiny may be appropriate.
3. New permit EJ action seems to involve more civil rights consideration. Notably, EPA's ECRCO is becoming more involved in this process to oversee Title VI civil rights interests. This adds another player into the process that may have previously only included EPA and/or state regulators and the company. Companies applying for permits in overburdened communities may want to be prepared for ECRCO scrutiny of their permit applications.

More EJ Resources from Trinity

- ▶ [EPA Updating Toxics Release Inventory Reporting to Advance Environmental Justice](#)
- ▶ [Renewed Focus on Environmental Justice with Biden EPA Pick](#)
- ▶ [Protecting "Overburdened Communities" Through Environmental Justice](#)
- ▶ [Learn More about Environmental Justice from Trinity](#)
- ▶ [Trinity's Environmental Justice Solutions \(PDF\)](#)

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