

# Environmental Justice 101 for Lawyers: U.S. and International Impacts and Strategies for the Growing Global Movement

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# **Environmental Justice 101 for Lawyers: U.S. and International Impacts and Strategies for the Growing Global Movement**

**February 20, 2024**

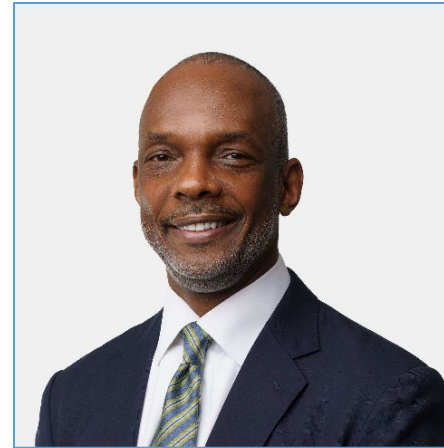
# Panelists



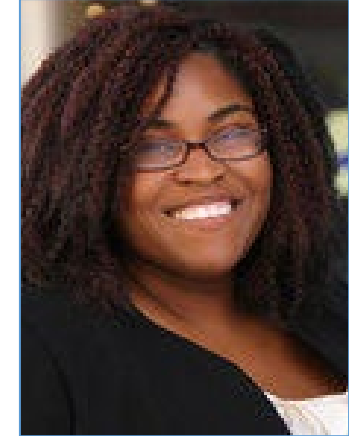
**Joel Eagle**  
*Thompson Hine LLP*  
Cleveland  
(moderator)



**Sylvie Gallage-Alwis**  
*Signature Litigation*  
Paris  
(panelist)



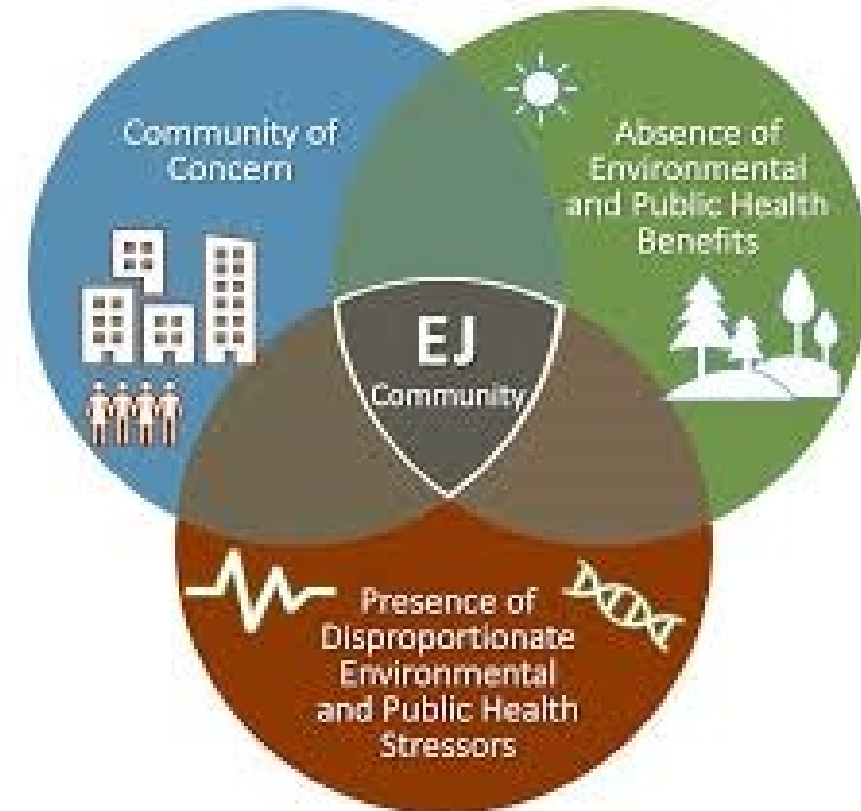
**Michael Marsh**  
*Akerman LLP*  
Ft. Lauderdale  
(panelist)



**Marquettes ("Marqui") Robinson**  
*Eaton Corp.*  
Cleveland  
(panelist)

# Discussion Roadmap

- **What is EJ? What are EJ Areas?**
- **Challenges to EJ Reform**
- **Current U.S. v. EU EJ Initiatives**
- **Intersections of Community and Corporate (ESG, DEI, Shareholder) EJ Interests**
- **Implementing EJ Best Practices: regulatory counseling and litigation defense**



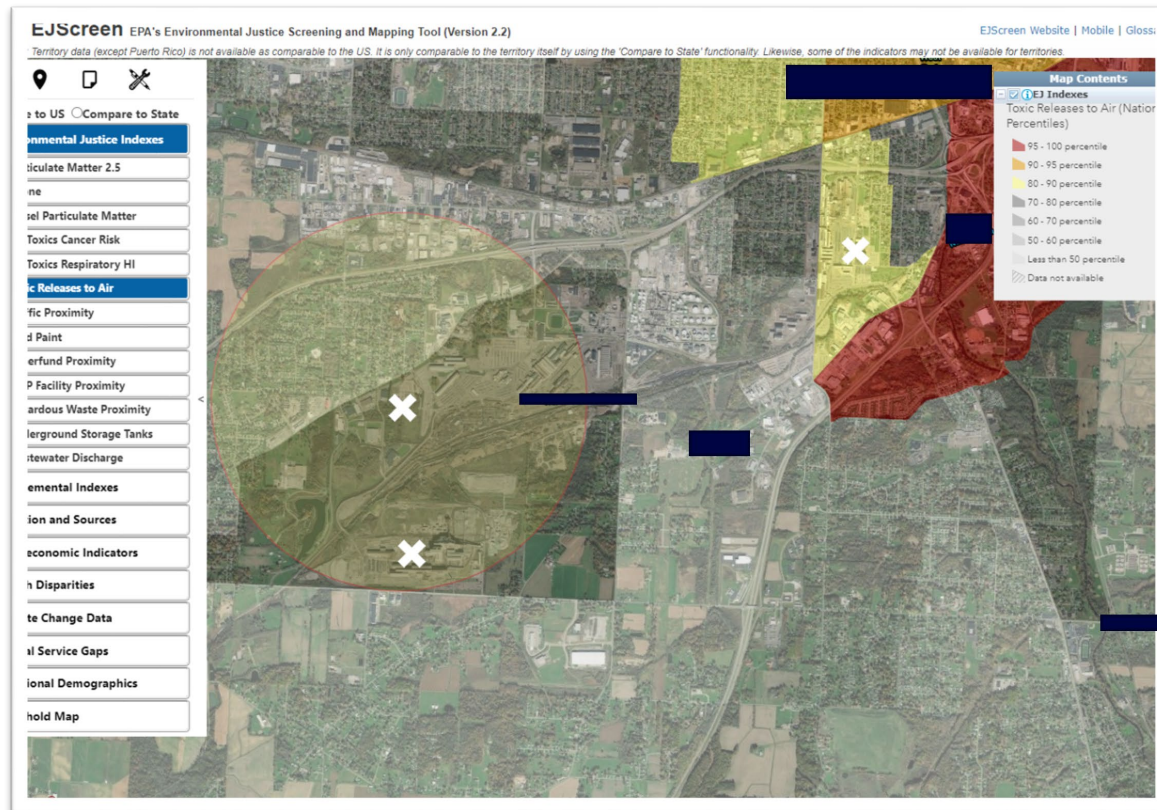
# What is Environmental Justice?

- **What is environmental justice?**
  - Fair treatment and meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws
- **Is EJ new?**
  - No, but it has a renewed focus.
- **Is EJ here to stay?**
  - Yes.



# What/Who Defines an EJ Area?

- EJ Screen is the primary tool used at the federal level for permitting purposes.
- 13 environmental indicators; 7 socioeconomic indicators; 13 EJ indexes
- EJ Index = environmental percentiles x demographic index
- 80th percentile for an EJ index nationally is the starting point.
- White House - Climate and Economic Justice Screening Tool – another screening tool with a different purpose.



# Challenges with EJ Reforms



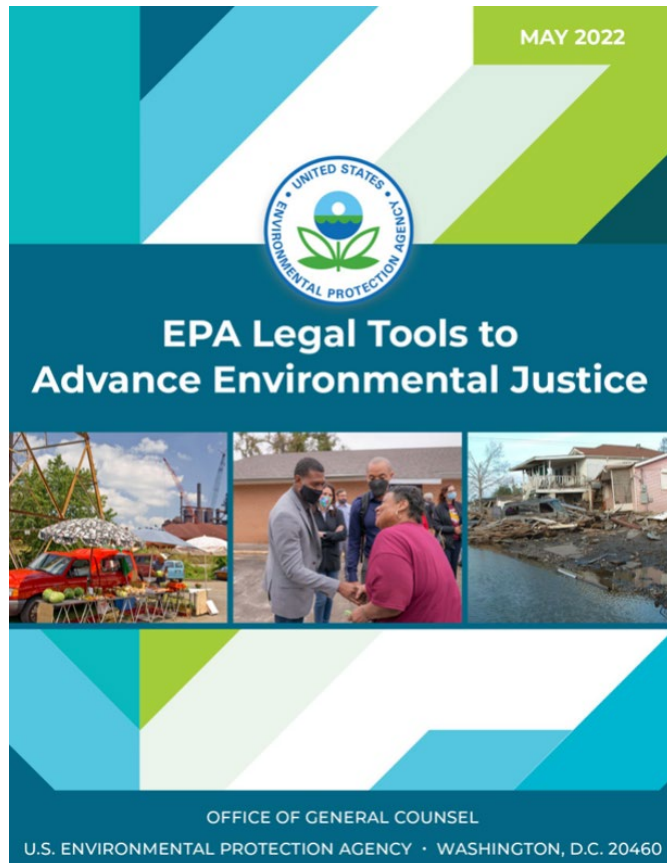
# Plan EJ 2014



- Whole-government approach
- Incorporate EJ into rulemaking
- Focus on EJ in permitting (engagement and tools)
- Increased enforcement
- Support for community-based programs



# Evolving Policies Impacting Environmental Justice



## EPA Legal Tools to Advance Environmental Justice (2022)

- No new legal authority; all pre-existing
- Summary of legal authorities by statute that EPA believes provides authority to pursue EJ in permitting and enforcement decisions

## Interim EJ and Civil Rights in Permitting – FAQ (2022)

- “To-date, most federal enforcement action in the civil rights arena has focused on other sectors [...] and not environmental protection. EPA recognizes that it is time to use the full extent of its enforcement authority under federal civil rights laws [...]”
- **Is there a “substantial legitimate justification” for disproportionate impacts?**
- **Are there “comparably effective alternative practices”?**

# Recent U.S. Federal Policies Addressing EJ in Permitting and Rulemaking

- ***Principles for Addressing Environmental Justice in Air Permitting (December 2022)***
  - Introduces 8 principles to considering EJ in air permitting
  - Consistent themes with prior federal actions
- ***Cumulative Impacts Addendum (January 2023)***
  - Addendum to EPA legal tools document (2022)
  - Focused on cumulative impact analysis in permitting
- ***Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All (April 2023)***
  - Reiterates “whole-of-government” approach
  - Focused on cumulative impacts on communities
  - Revisits Clinton-era EO on EJ



## Industry Asks EPA To Delay Finalizing Sweeping Environmental Justice Guide

Inside EPA

Feb 13, 2024 7:00 AM

# EJ Outside of the U.S.

## Is the EU different from the US?



The European approach to Environmental Justice focuses primarily on territorial inequalities, on the social specialization of spaces : inequalities between individuals are those of the territories they inhabit - more or less endowed with resources and subject to environmental nuisances and risks - and not social inequalities that would differentiate them ethnically, according to income or gender.

However, this peculiarity of the European approach to ecological inequalities has more to do with its recent appearance, with an urban geography where the ethnic dimension is less visible than in the USA, with a French republican and universalist vision that puts a lid on possible or latent discrimination, or with the absence of an interdisciplinary approach that would link the environmental to the social, than with the real absence of links between ecological and social inequalities.

<https://journals.openedition.org/eps/2418>

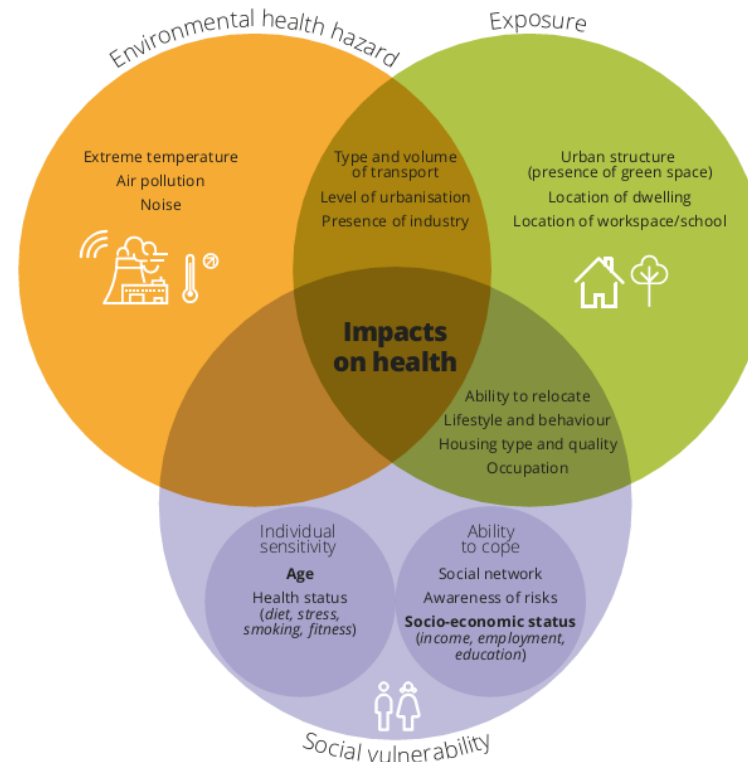
# EJ Outside of the U.S.

What type of definitions do we have?

**Geographical  
versus  
temporal  
inequalities**

**Inequality to  
exposure versus  
inequality to the  
consequences of  
exposure**

Figure 1 Impacts on well-being from a combination of vulnerability and exposure to environmental health hazards



Sources: EEA, based on IPCC (2014b), WHO Europe (2010) and Aalbers et al. (2014). The report addresses the aspects of exposure and vulnerability to a varying extent.

# EJ Outside of the U.S.

## EEA BRIEFING

## Environmental justice, environmental hazards and the vulnerable in European society

### Europeans live well but some are more vulnerable

Compared to other world regions, Europeans enjoy good quality of life. EU policies and legislation, such as the Seventh Environment Action Programme (7th EAP) and the Cohesion Policy, have led to economic growth and improvements in living conditions and environmental standards.

However, socio-economic inequalities continue in Europe at national, regional, neighbourhood and individual levels. The well-being and living standards of some groups, such as the elderly, people living in poverty and those with lower education or with limited employment prospects tend to be lower.

### Key messages:

- The uneven distribution of the impacts of air pollution, noise and extreme temperatures on the health of Europeans closely reflects the socio-demographic differences within our society.
- There are strong regional differences in social vulnerability and exposure to environmental health hazards across Europe.
- Inequalities in exposure to environmental health hazards and their impacts on European society are only somewhat addressed by current policy and practice.
- The impacts of and exposure to environmental health hazards are likely to continue in the future and thus require increased recognition in policy across governance levels.
- Better alignment of social and environment policies, and improved local action can help to tackle environmental justice issues.



The European  
Green Deal

# EJ Outside of the U.S.

Europe has historically been and remains **responsible for a disproportionately high share of global environmental destruction and resource consumption**. The amount of extraction needed to meet Europe's high resource demand has a heavy toll on the environment and humans alike, with greater severity in the Global South. **Europeans use vast amounts of land and water resources from other continents**, contributing to soil degradation through the use of pesticides, and causing ever-increasing emissions through long transportation routes. **Environmental injustices, therefore, take place at both local and global scales.**

As a response to the rise in global temperatures, the EU is determined to reach a **climate-neutral economy by 2050**. Yet, the low-carbon technologies needed to achieve an energy transition come with a **hidden cost**. Around the world, raw material extraction has serious social and environmental impacts such as displacement, internal and external conflict – including threats and killings of land defenders and social leaders – eroded livelihoods, contaminated air, soil and water, lack of access to arable land and fresh water, and severe health impacts...

While Europe has been at the forefront of creating environmental problems, it has also been at the forefront of finding solutions, even if it falls a long way short of genuine sustainability.

# Inequality and Equality

**Inequality**

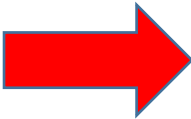


**Equality**



# Equity and Justice

**Equity**



**Justice**





# Overarching EJ Considerations

- Cumulative Impacts
- Balancing public health/racial inequity with economic interests (including local employment)
- Unintended EJ consequences?
- Practical implementation of EJ actions?
- Meaningful involvement? Community *residents*, not just community *leaders*
- Listen (and Hear). Learn. React.



**THANK YOU FOR JOINING US!**

**QUESTIONS?**

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