

US Law Week  
Nov. 3, 2022, 3:00 AM CDT

# Environmental Justice Needs to Be Prioritized in ESG Programs

By Heidi B. (Goldstein) Friedman

---

*Heidi Friedman, an environment group partner and ESG practice co-chair at Thompson Hine, shares how companies can strategize and form community partnerships to ensure that environmental justice efforts mitigate risks while furthering ESG priorities.*

More corporations are adopting environmental, social, and governance programs with new Securities and Exchange Commission rules and increased stakeholder demand. As companies are herding all E, S, and G items under one umbrella, environmental justice should be front and center during this process. Too often, it's been overlooked in favor of climate change mitigation.

The Environmental Protection Agency defines EJ as “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 priorities.” This is by no means a new concept, but the Biden administration and EPA Administrator Michael S. Regan have prioritized environmental justice, and more importantly, funding.

Since Sept. 27, the EPA's new Office of Environmental Justice and External Civil Rights combines three historic offices that all focus on these issues. This office will oversee distribution of \$3 billion in EJ grants created by the Inflation Reduction Act in addition to Biden's Justice 40 Initiative.

## Forming Community Partnerships

Facilities and remedial projects are often located in areas where communities are already overburdened by industry and tend to be within a lower economic profile or part of a historically underrepresented group. Thus, for example, if you want to get a new permit to expand your facility, it is very important to understand what may concern the residents in the vicinity of the facility and if the additional emissions (subject to appropriate controls of course) would provide a disparate impact

The federal government's combined emphasis provides an opportunity for companies to formulate a comprehensive EJ strategy and set targets and goals that can be tracked and shared through their ESG process and reporting. Now is the time to strategize how best to partner with underserved communities to ensure they are heard and not at a disadvantage.

One of the initial struggles is determining which areas and sites are in fact EJ communities. The EPA's EJScreen serves as a guide to making an EJ determination, but any given data set is subject to varied interpretation. Understanding health data in the area and whether there have been previous complaints is important in addition to surveying the local industrial landscape. Previous complaints can be checked using a FOIA and review of the court docket.

### **Critical Steps for Integration**

Following are some concrete concepts to successfully integrate EJ into a company's ESG process.

Once a company understands the communities where its facilities are located, it should plan what will be required in terms of short- and long-term expansion, new facility openings, and decommissioning, such as when a facility is closed and operations sold or moved elsewhere. Strategic planning will ensure that these decisions do not impact already overburdened areas and create potential challenges to obtaining a permit, which can still be denied even if environmental compliance is achieved by addressing Title VI issues.

Organizations should also recognize the need for expert advice and collaboration. It's helpful to form an advisory board and bring in community experts from key locations around the country to review a company's sites and facilities. This will provide objective third-party advice on partnering with these communities. Nongovernmental organizations or other civic or industry leaders also may have data and experience on the EJ front.

It's important to stay connected with internal communications teams. Waiting to reach out after a negative event occurs can be detrimental. Strategy won't be one-size-fits-all for every facility or site. Tracking all communications with any stakeholder will establish a record.

Proactively reaching out to the community at the beginning of any process is imperative. This can be done by forming a community advisory group, providing updates on the process to the community, and fielding questions at any scheduled meetings.

An independent expert can provide scientific input. Private funding, a grant, or other government funds can supply additional resources. These additions are outside the mandates of the Comprehensive Environmental Response, Compensation, and Liability Act, but if they are implemented throughout the site clean-up process, this will allow more control in decision-making with fewer surprises.

Companies that form relationships with the local health department or city or county officials have the opportunity to further disseminate information. Key stakeholders should be educated about the company's activities in the area. These independent third parties can be a vital partner and resource that can help build trust.

Fact sheets, door hangers, and other communications such as Q&As share concrete information with the public. These handouts are especially helpful if work being done may be loud or ongoing, and should always include a contact for questions.

Organizations that sincerely forge community partnerships will have the most successful EJ projects. There might be additional community opportunities like sponsoring important events or revitalizing run-down public areas like parks or playgrounds. Investing in areas of operation before problems occur can help with building trust and lead the company and community work through more stressful events in a streamlined manner.

For various projects, increasing the workforce may be necessary. Hiring local sends a message of integration, as does redeveloping additional sites that benefit both the company and the community.

A combination of creativity, time, and information-gathering can mitigate risk on the EJ front while engaging in activities that further ESG priorities and help overburdened areas. Proactivity, transparency, and relationship-building will reduce overall risk and cost in the long-term.

*This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.*

*Write for Us: Author Guidelines*

#### **Author Information**

*Heidi B. (Goldstein) Friedman is a partner in Thompson Hine's Environmental and Product Liability practice groups as well as the co-chair of the firm's ESG Collaborative. She focuses her practice on environmental, health and safety counseling in business, regulatory and legislative matters.*