

# A New Day For Environmental Justice at the U.S. EPA

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*On February 16, 2024, Cliff Villa, the Environmental Protection Agency Office of Land and Emergency Management Deputy Assistant Administrator presented at The University of Memphis Law Review Volume 54 Annual Symposium. Here, he spoke to students, lawyers, activists, and community members about environmental justice at the EPA. Our symposium was focused on harmful infrastructure and land uses impact on marginalized communities. The editors of The University of Memphis Law Review are pleased to share with our readership this essay, adapted from Mr. Villa’s speech.*

*Mr. Villa spoke on the history of environmental justice within the EPA, important definitions and policies of environmental justice, and how funding has changed in the EPA. He discussed the important role that the EPA plays in assisting communities that are in need of clean up. Additionally, Mr. Villa shared new rules that the EPA is putting in place to further assist with environmental justice in marginalized communities.*

*Ashlie N. Gozikowski, Symposium Editor*

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## I. INTRODUCTION

Good morning. Thank you all for coming and for the honor of joining you today for this symposium at the University of Memphis Cecil C. Humphreys School of Law. From the program agenda, it seems I’m the government guy today, from the U.S. Environmental Protection Agency (“EPA” or the “Agency”).

The EPA was my dream job in law school, and after graduation in 1993, I was lucky enough to go straight to EPA Headquarters in Washington, D.C. to begin my life in environmental law. In 2015, I left the Agency, and I went into teaching law full-time—and I was very happy writing articles and thinking about grand suggestions for the future. In 2022, however, I was called back into public service by the Biden Administration. I’m delighted to be back at the EPA now because there’s a lot of exciting work that is happening right now at the Agency and across the federal government. I want to share some things with you, including opportunities for thinking about public service.

September 24, 2022, was a big day in the history of the EPA. On this day, EPA Administrator Michael Regan signed an order creating a new Office of Environmental Justice and External Civil Rights (“OEJECR”) within the EPA.<sup>1</sup> We’re very excited about our new office of environmental justice at the EPA. However, the EPA takes environmental justice seriously across all the offices, including my own Office of Land and Emergency Management (“OLEM”).<sup>2</sup>

OLEM is responsible for things like cleanup of contaminated sites under the Comprehensive Environmental Response,

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1. See *EPA Launches New National Office Dedicated to Advancing Environmental Justice and Civil Rights*, U.S. ENV’T PROT. AGENCY (Sept. 24, 2024), <https://www.epa.gov/newsreleases/epa-launches-new-national-office-dedicated-advancing-environmental-justice-and-civil>.

2. See *generally About the Office of Land and Emergency Management*, U.S. ENV’T PROT. AGENCY (Aug. 6, 2024), <https://www.epa.gov/aboutepa/about-office-land-and-emergency-management>.

Compensation and Liability Act (“CERCLA”),<sup>3</sup> better known as “Superfund.” My office also supports programs for the management of solid and hazardous waste, as well as emergency response, working with federal facilities, and working with leaking oil tanks. In this symposium today, we just had a great discussion about one statute, the National Environmental Policy Act (“NEPA”).<sup>4</sup> But sometimes the solution that communities may be looking for are available under another statute or program or even new rules which we’ll talk about to help address emerging problems. There’s a lot of exciting things happening today to address concerns for environmental justice!

If I were talking about environmental justice to a group of law review editors, they would want an outline up front, and it must be in five parts. So, in this lecture, we will begin with some early history of environmental justice, how we realized the existence of environmental injustice in the first place. Then we’ll talk about some key definitions, acknowledging that communities may conceive of environmental justice in many ways and recognizing that conceptions of environmental justice may have changed over time. Third, we will look at some specific policies directed towards achieving environmental justice: things that we could do as an agency within our existing authority to promote environmental justice. Fourth, we’ll talk about new sources of funding. We’ll discuss the Bipartisan Infrastructure Law and the Inflation Reduction Act, which are both making significant resources available to communities right now, but also creating the challenge of making sure that resources go to the communities who really need it. Fifth, and finally, we’ll talk about environmental justice and *you*. How do you get involved? There is a place for you, and I really want to make sure that you see that opportunity as well.

## II. ENVIRONMENTAL JUSTICE ORIGIN STORIES

If we’re talking about the origin story of environmental justice, you can start in many places. Some scholars would go back to the Old

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3. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601–9675.

4. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4331–4370m-12.

Testament.<sup>5</sup> But another origin story of environmental justice begins here in Memphis, Tennessee. You probably know about the Memphis sanitation strike and how Martin Luther King came to this great city to advocate for sanitation workers and their families. And his last speech, that great Mountaintop vision on April 3, 1968,<sup>6</sup> becomes, among many other things, one of the birth places of environmental justice.

Here is another origin story: In 1982, in Warren County, North Carolina, where Reverend Benjamin Chavez led a protest against a landfill for polychlorinated biphenyls in a largely Black community.<sup>7</sup> From this story, you can learn a lot about the origin of environmental justice. If you look at the terrible arrest records, you'll actually see the protesters were Black, and White, and substantially indigenous as well.<sup>8</sup> You can see that environmental justice is both urban and rural. It is the intersection of the civil rights movement and environmental movement. In the 1960s, we saw the rise of the civil rights movement. In the 1970s, we had the passage of environmental laws, and in the 1980s, we started to see how they came together or could—or should.

Five years after Warren County, we had the seminal report by the United Church of Christ, *Toxic Wastes and Race in the United States*,<sup>9</sup> that looked at toxic waste sites across the United States and found over and over again how they are in minority communities. You will see some very interesting statistics here. At the time, three out of every five Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites.<sup>10</sup> Blacks were heavily overrepresented in metropolitan areas with a large number of uncontrolled toxic waste sites. And the number one city where we see this overlap? Memphis,

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5. See, e.g., Jonathan C. Augustine, *Environmental Justice and Eschatology in Revelation*, 58 LOY. L. REV. 325 (2012).

6. For the complete text of that momentous and prophetic speech, see MARTIN LUTHER KING JR, I HAVE A DREAM: WRITING & SPEECHES THAT CHANGED THE WORLD 194–203 (James Melvin Washington ed., 1986).

7. For a deep and compelling narrative of the Warren County story, see EILEEN MCGURTY, TRANSFORMING ENVIRONMENTALISM: WARREN COUNTY, PCBs, AND THE ORIGINS OF ENVIRONMENTAL JUSTICE (2007).

8. *Id.* at 108 tbl.4.2 (out of 410 protesters arrested, 241 were Black, 129 were white, and 40 were Native American).

9. COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES (1987).

10. *Id.* at xiv.

Tennessee, followed by St. Louis, Missouri.<sup>11</sup> And in some ways, you can find that these patterns that were identified in 1987 are still very much with us today.

Fast forward another five years and environmental disparities were starting to get the attention of government agencies including the EPA. The EPA issued a report<sup>12</sup> that confirmed what a lot of researchers and activists had been saying was no coincidence. But also notice the title of the report—not “environmental justice,” but *Environmental Equity*. You still see that today, but environmental equity was quickly left behind in favor of environmental justice. If you take environmental equity literally, it could also mean poison people the same, and we definitely don’t want that. What we want is to protect everyone. So, from environmental equity, which is still fair, we moved on to environmental justice.

The same year that this report was issued in 1992, I was in law school (and thank you to a professor who believed in “experiential learning” before that was a thing). The professor took us on a field trip in Portland, Oregon, to something called the Willamette Slough. It’s the industrial backwater of the City of Portland and we’re on a boat. We’re puttering upstream and floating on the water we start to see this stuff they call “peanut butter.” It’s not peanut butter. It came from pipes poking out of the banks and is called a combined sewer overflow. On a warm fall day, we saw kids splashing directly downstream, in raw human sewage. Now at the time in 1992, we didn’t have the term “environmental justice” and the only question here was whether or not the City of Portland should post a sign warning people against swimming in the water. And if you post such a warning sign, would you have to post it in more than one language?

It was evident then that the people on the banks who lived in that community were not like us on the boat: they were immigrant families; they were low-income. They were not the kind of people who were going to be reading signs posted by the city and regulations published in code books. We didn’t have “environmental justice” as a term then, but we did a year or two later, in 1994.

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11. *Id.*

12. U.S. ENV’T PROT. AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (1992).

From law school, I went to the EPA. I was fortunate enough to do an internship with the EPA in my second summer. I got hired through the honors hire program which still exists today.<sup>13</sup> I started my EPA life with EPA Headquarters in Washington D.C. and then I had an opportunity to move to EPA's regional office in Denver, Colorado. Then after another couple of years I joined the EPA regional office in Seattle, Washington.

With EPA Region 10, based in Seattle, I started to work with our emergency response program. Did you know the EPA has an emergency response program? We have approximately 220 emergency responders placed across the country who respond to things like truck rollovers and train derailments, and natural disasters like floods and wildfires. In April 2007, the EPA received a call about mercury contamination in a residence in Yakima, Washington, on the other side of the Cascade Mountains from Seattle. And the immediate question when the EPA arrived on the scene was, "Where did the mercury come from?"<sup>14</sup>

So, our guys in the moon suits started going through the neighborhood. We're knocking door to door, and it seems like nobody is granting us access to enter their property. For me, this moment was like going through the looking glass because, until then, I thought the EPA were the good guys. I really believed that our help should be welcomed. But from the perspective of that largely Spanish-speaking community, I see now that we were the government descending upon a community. So, I had to step back then and ask, how are we going to do our important environmental work and make sure that we're also protecting communities themselves.

Well, I started to dig into this idea of environmental justice—and *injustice*. Every time we send out our emergency response crews, we would learn more and more about what is really happening in these communities. And when I left the Agency and started to do research, I started to collect these stories. I started going through public websites

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13. See *Internships and Fellowships for Law Students and Recent Law School Grads*, U.S. ENV'T PROT. AGENCY (Dec. 27, 2023), <https://www.epa.gov/careers/internships-and-fellowships-law-students-and-recent-law-school-grads>.

14. For further details on the "Yakima Mercury Release," see Clifford J. Villa, *Beyond Bake Sales: Environmental Justice Through Superfund Removal Actions*, 52 ENVTL. L. REP. 10784 (2022) [hereinafter *Beyond Bake Sales*].

to find where the EPA had done emergency responses and who lived in those communities. I pulled some of these stories together and put them in an article.<sup>15</sup> This article in part responded to another environmental law conference I attended. One session was all about how communities could raise money to clean up contaminated sites. I was sitting in the back row thinking, “Hey, hasn’t anyone here heard of Superfund and other public resources available for cleanup?” Communities should not be burdened with holding a bake sale to study groundwater contamination. But there were (and probably still are) a lot of people who have no idea that these resources are available.

The conference where I sat in the back row is held every spring in Eugene, Oregon.<sup>16</sup> For many years, starting in law school, I would go there, and I often spoke on panels. One year, I was invited to speak on a panel on environmental justice and a local organization said, “Hey, you cannot come to Eugene and talk about environmental justice without coming to my community to see environmental injustice.” And they took me to this neighborhood in West Eugene and we got out of the car. I breathed and immediately got a sore throat, my eyes watering. How on earth can this happen? Well, they’re across the street from a big industrial facility that created horrible air pollution problems that apparently were not regulated by the Clean Air Act. Even so, one specific question that community members asked us was, “Can you at least tell us whether or not it’s safe for us to grow vegetables in our garden?” And yes, we can. And yes, we did. The EPA has mobile laboratories, and we sent one of our mobile labs to this community. We set up in a church parking lot on Sunday, so when people came out of church, they could come talk to us and we handed out sampling kits, which consisted mostly of a Ziploc bag, a plastic spoon, and illustrated instructions. With these kits, community members could take a sample of soil from their own backyard and bring it to us. And then we have this cool machine called an XRF that can zap the soil and provide a pretty instant reading on many chemical

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15. *Id.*

16. The Public Interest Environmental Law Conference (PIELC), on the campus of the University of Oregon in Eugene, has been going strong now for forty-two years. See *Welcome to the 42nd Public Interest Environmental Law Conference*, PIELC <https://uopielc.squarespace.com/>.

contaminants.<sup>17</sup> Again, not surprisingly, the community was largely Spanish speaking, which tells us that we need people inside the EPA who are prepared to communicate and address barriers of language and culture. We had one of those people with us. And we've done this kind of thing in many other communities as well. In Philadelphia, they called it the "Soil Kitchen." Other places call it the "Soil Shop," but the idea is bringing services to communities, not expecting them to try to go find resources on their own.

### III. ENVIRONMENTAL JUSTICE DEFINITIONS

I mentioned how important it is for us to understand what we mean when we're talking about environmental justice. Particularly law students and future lawyers, you're going to crave definitions. While every community is free to define "environmental justice" according to their own needs, the EPA and now the federal government has a pretty standard definition. For twenty years, it began like this: "Environmental justice is the fair treatment and meaningful involvement of all people . . . ." Fair treatment, but not necessarily *equal* treatment. The house that is on fire is the one that needs the water, right? The fire department does not need to apply water equally across every house on the block. Fair treatment and *meaningful involvement*. I think over the last twenty years, the EPA has learned a lot about community involvement. We know now that we may need translators before we go into communities where we need translators. We know now we should not do public meetings in the middle of the day in a downtown hotel, but maybe we should be thinking about evenings or weekends or childcare or feeding, right? We're starting to get better at reaching out to communities. The challenge now is: *What do we do when we hear back?* Can we say "no" to a project based upon community opposition? Can we make adjustments that will make things a little better?

I have one modest example of meaningful involvement. You've probably heard about the train derailment last year in East Palestine, Ohio. Lots of things happening, but in the middle of all that, one specific question came to us as we approached Easter: "Is it safe for us

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17. For more description of the "My Garden – West Eugene" project, see *Beyond Bake Sales*, *supra* note 14, at 107990.



to hold an Easter egg hunt in the city park?” That shouldn’t be the hardest question in the world—and it wasn’t. We sent people out there and did some sampling in the city park. And yes, in fact, it was safe to do the Easter egg hunt in the city park. Not the biggest thing on the EPA’s agenda, but it was important to that community. That’s what it means to engage meaningfully. Answering the questions the communities themselves have for us.

Now here’s a big one, maybe a mind blowing one, if you thought environmental justice was just about race or ethnicity or income. Imagine if environmental justice, as defined by EPA, is really about everyone, all of us, “all people.” “All people” means rich or poor, urban or rural. White, Black, Brown, Indigenous. When we start to take “all people” seriously, it can lead us to some interesting places.

It’s easy to see a community that needs help when there’s a big fireball on CNN. You can probably find East Palestine, Ohio, on the map now. But could you find the community of Sunland Park in my home state of New Mexico? Sunland Park is a *colonia* at the very southern tip of New Mexico. If you happen to be sitting in a public meeting in Sunland Park and one community member stands up and, speaking in Spanish, tells you about the nasty smelling water coming out of his kitchen faucet, would you hear it? Would you understand? Would you take that concern seriously? Notice that “all people” does not require a certain immigration status. The law knows how to say “citizen” when it means citizen. To say “all people” must mean something more.

After I left the EPA’s Seattle office in 2015, I joined the law faculty of the University of New Mexico. And some years ago, in a seminar on environmental justice, one of my students came to me and said, “I want to write about environmental justice and transgender people.” And I said, “That sounds great. Do your literature search, see what you find, and then come back and we’ll talk about it.” The student did a literature search and said, “I’m not finding anything.” I said, “Go work with the law librarians.” (Always work with the law librarians.) Still, nothing came up. There was nothing, at least in the legal literature, until the student wrote this article which was published by UC Berkeley.<sup>18</sup> When you start thinking about all people, imagine the

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18. Zacary E. Wilson-Fetrow, *Meaningless Involvement: How Traditional Modes of Involvement Exclude Transgender People from Environmental Justice*, 48

worlds that you can start to see. The places where people feel safe and unsafe. The places where people can engage or not engage.

COVID taught us some lessons too, didn't it? The same virus that eventually reached almost everyone had dramatically different impacts on certain populations. UCLA did a study of mortality at the height of the COVID pandemic. Bottom line, Latinos had a death rate nearly six times above Non-Hispanic Whites.<sup>19</sup> Blacks, American Indians, and Native Hawaiians also all had elevated mortality rates.<sup>20</sup> And we know there are reasons for that, right? Multi-generational housing, jobs that do not translate to Zoom, the people who feed us, who are probably cleaning my hotel room as I speak. We occupy different spaces. We may have lesser access to health care. We may have compromised respiratory systems because we grew up in an area of severe nonattainment with the Clean Air Act. And now we're being exposed to a respiratory disease. And so, we see disproportionate impacts in a new way.

Of course, what does an academic do but write an article with grand proposals. My proposal, looking at how environmental justice has evolved and continues to evolve rapidly, is that we may need a new definition of environmental justice to try to make sense of what we see is happening.<sup>21</sup> Now, we don't always know what happens with our recommendations. And I can't say I know exactly what happened with my recommendation. But I can say just a few years later that the President did amend the official definition of environmental justice. Executive Order 14096<sup>22</sup> gave us some very interesting new words in the definition of environmental justice. It gives us the word "disability."<sup>23</sup> And do we see why? Think of people with limited

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ECOLOGY L.Q. 843 (2021). For a quick review of environmental justice and LGBTQ concerns in other fields of inquiry beyond legal literature, see Leo Goldsmith & Michelle L. Bell, *Queering Environmental Justice: Unequal Environmental Health Burden on the LGBTQ+ Community*, 112 AM. J. PUB. HEALTH 79 (2022).

19. *COVID Casts Stark Light on Structural Inequities in California*, UCLA: FIELDING SCH. OF PUB. HEALTH (June 29, 2021), <https://ph.ucla.edu/news-events/news/covid-19-casts-stark-light-structural-inequalities-california>.

20. *Id.*

21. See Clifford J. Villa, *Remaking Environmental Justice*, 66 LOY. L. REV. 469 (2020).

22. Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 26, 2023).

23. See *id.* § 2(b) (definition of "Environmental justice").

mobility unable to escape advancing flames or floodwaters. Yesterday, I met with community members here in Memphis and we heard over and over again about some of the horrific health ailments and the proliferation of dialysis centers across the city. If you look at mortality after Hurricane Maria in Puerto Rico, according to one study, the number one factor for death was pre-existing heart disease, followed closely by diabetes.<sup>24</sup> Think about that. The longest power outage in U.S. history disrupts supply chains, disrupts medication, and also disrupts refrigeration which disrupts insulin which kills people. Knowing that, can we be more prepared next time? Yes, I think we can.

So, disability is one new word we have in our definition of environmental justice. The new definition also talks about “risks”—and we should talk about risk because I think too often we wait for bad things to happen. We should not wait for the next train derailment before we take action to address risks of derailment. I remind people in my own agency that we are the Environmental *Protection* Agency. We should literally *protect*. We should see these risks and we should take action before the bad things happen—or happen again.

The new definition of environmental justice now explicitly includes “climate change,” and we have seen examples of that. On one day, September 7, 2017, weather maps showed Hurricanes Katia, Jose, and Irma lined up approaching the Gulf Coast, with Irma about to make a direct strike on Florida. But these three hurricanes were following Harvey, which had already inundated Houston. And not even on the weather map yet was Hurricane Maria, building up to Category 5, and about to make a direct hit on Puerto Rico. It can’t happen. Except it did happen, and it will happen again. And we must be ready for it.

“Cumulative impacts” is also now an explicit part of the new definition of environmental justice. We know that communities may be impacted by multiple exposures. Think of the Flint drinking water crisis.<sup>25</sup> A generation before we knew about the lead in drinking water,

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24. Raul Cruz-Cano & Erin L. Mead, *Causes of Excess Deaths in Puerto Rico After Hurricane Maria: A Time-Series Estimation*, 109 AM. J. PUB. HEALTH 1050, 1052 (2019).

25. For background on the Flint Water Crisis, in case anyone missed it, see Clifford J. Villa, “Don’t Blame the Flint River”, 52 ENV’T. L. 341 (2022).

community members already suffered from lead in their air and soil.<sup>26</sup> Now that we understand the “body burden” that community members may already carry when experiencing a new exposure, how do we account for that in our response?

And yes, explicitly in the new definition of environmental justice, we must also consider the “legacy of racism” in this country. I went to St. Louis earlier this week and asked if anyone had heard of the Dred Scott case?<sup>27</sup> I hope you have. When you go to see the big arch in St. Louis, turn around and you’ll see a famous courthouse<sup>28</sup> where the infamous case of Dred Scott was argued, with the Supreme Court concluding that a certain group of Americans were not citizens with access to the Constitution and the courts.

All right, law students, who can give me the facts of *Shelley v. Kraemer*?<sup>29</sup> Kraemer was one of the worst neighbors in American history. The Shelley family bought their house and wanted to live there, but Kraemer tries to enforce a racially restrictive covenant. The Supreme Court in 1948, does not find that the covenant itself is invalid but finds that the state courts are state actors with no power to enforce the covenant. And the case takes place right there in St. Louis. And in 2014, in a suburb of St. Louis known as Ferguson, Michael Brown was shot and killed by police, setting off massive protests and the movement known today as Black Lives Matter. The legacy of racism is still with us now. We see it in racial violence continuing across the country. You saw it in Minneapolis where George Floyd was killed. And I cannot come to Memphis without recognizing violence right here, where Tyre Nichols was killed by Memphis police on January 10, 2023.

I want to say that I love my country, and I know it’s worth fighting for. I have driven coast to coast, the Pacific to the Atlantic. In 2023, I visited Alaska, Hawaii, New York City, and Miami, and many places in between. And one thing that I keep finding besides tragedy

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26. See Luke W. Cole, “Wrong on the Facts, Wrong on the Law”: Civil Rights Advocates Excoriate EPA’s Most Recent Title VI Misstep, 29 ENVTL. L. REP. 10,775 (1999).

27. Dred Scott v. Sandford, 60 U.S. 393 (1856).

28. The “Old Courthouse” is now part of Gateway Arch National Park. See Gateway Arch: National Park Missouri, NAT’L PARK SERV., <https://www.nps.gov/jeff/index.html>.

29. Shelley v. Kraemer, 334 U.S. 1 (1948).

are heroes. People who are living in communities every day and fighting, and sometimes winning.

I would come here just to hear Representative Justin Pearson. There are people out there in communities doing amazing stuff. You must believe that. When we talk about racism today, we can see that in many ways, including patterns of pollution. Representative Pearson told me about the Boxtown community here in Memphis, and I went and drove it. But if I never had been there, I could use GIS tools to get a little more information, things like EJ Screen.<sup>30</sup> Please try it out some time. Drop the name of your elementary school into the search box. I dropped “Boxtown, Memphis” into EJ Screen and retrieved data on both environmental and demographic factors. The EJ Screen data indicate that Boxtown is in the 98th percentile for people of color. It is also high for low income and lower for high school education. On top of the demographic factors, you can get environmental data. And you see we’re in the top 90th percentile on almost all these factors too, including particulate matter and ozone. That’s not a mistake. These are patterns you could see reproduced over and over again. And you can do it yourself. You can do it on your phone now. Now, there is no substitute for ground truthing. You have to get out there eventually. But GIS tools are good places to start because most lawyers don’t get out into the field immediately or maybe ever. But you could start to do a little more homework from your desk.

Back to our new definition of environmental justice. There are some lovely words of aspiration: “equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.”<sup>31</sup> We actually *want* environmental justice, let me remind you. What are “subsistence practices”? If you had said that to me ten years ago, I might have imagined hunting caribou in the Arctic. I had no idea that in my home state of New Mexico, there is a substantial reliance on subsistence hunting. I only learned that after some horrific fires had hit some of the communities in Northern New Mexico and learned how important it was to those community members to have a freezer to store elk meat going into the winter. They harvest elk, and

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30. See *EJScreen Environmental Justice Screening and Mapping Tool*, U.S. ENV’T PROT. AGENCY (July 8, 2024), <https://www.epa.gov/ejscreen>.

31. Exec. Order No. 14,096, 88 Fed. Reg. 25,251, § 2(b)(ii) (Apr. 26, 2023).

they sustain their life through really hard winters. FEMA (Federal Emergency Management Agency) didn't see that because food is not one of those things that is traditionally subject to disaster assistance. You might get an EBT card you can take to the Dollar General to get frozen pizza. But even that has implications, right? Substituting processed foods for fresh and native foods raises the concern sometimes known as food justice. I lived in Seattle for nearly twenty years in a house overlooking the Duwamish Waterway and didn't know subsistence fishing from the urban waters was so substantial. In any major urban waterway—such as the Duwamish River in Seattle, the Houston Ship Channel, the Mississippi through Memphis, and the Potomac in our Nation's Capital—you will find people pulling catfish or flounder off the bottom of rivers and eating them, no matter how many signs are posted telling people don't eat the fish. We know people will. Studies from the Duwamish Waterway have revealed that Latinos catch and eat fish at much higher rates than non-Hispanic whites.<sup>32</sup> And we don't have any idea how many homeless people are catching and eating fish. If we care about “all people,” we must care about subsistence uses.

We also care about cultural resources and cultural uses, and sometimes these are hard to quantify. We're learning more and more about how important cultural resources can be to the health of the community. You've probably heard about the horrific wildfires last year in Maui. The EPA was doing work there immediately to clean up residential and commercial properties. We go property by property looking for hazardous materials such as car batteries and asbestos, and we clear that material to begin the process of restoring the community.<sup>33</sup> I was out there in October with the EPA's Deputy Administrator to observe the process and meet with our EPA responders and community members. Sometimes, when we think we are the experts, we discover that we are the ones learning from the community. We are still processing some of the lessons we learned in

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32. In an on-river survey in 2016, five out of six Latinos reported catching and eating resident fish from the Duwamish Waterway, compared to only one out of seven White/Caucasian people. LOWER DUWAMISH WATERWAY GROUP, LOWER DUWAMISH WATERWAY FISHERS STUDY, DATA REPORT 22 tbl. 3-5(Dec. 23, 2016).

33. For an overview of EPA's work in response to the Maui wildfires of 2023, see *2023 Maui Wildfires*, U.S. ENV'T PROT. AGENCY (July 9, 2024), <https://storymaps.arcgis.com/stories/543ef95291704045a8943866f4c84b04>.

Maui. We are thinking a lot now about mental health. How do we send our EPA responders into communities where we know people died and where they may encounter human remains? How do you see lives destroyed and not take that home? The Native Hawaiian people on Maui were amazing. They provided cultural monitors so that we would understand and protect cultural resources as we carried out our work. Every morning, they led our cleanup crews in a *pule*, a blessing if you will, before they went out to the field. At the end of the day, the teams came back to the beach and had a cleansing ceremony to wash away the bad spirits, so we didn't take them home.

We can learn so much if we're serious about listening. And there's so much more we could be doing to promote environmental justice. I want to outline just a few of these things now.

#### IV. ENVIRONMENTAL JUSTICE POLICY

We have a new Office of Environmental Justice and External Civil Rights at the EPA. We're very excited about that. But we are also not saying that only the Office of Environmental Justice gets to promote environmental justice ("EJ"). In my EPA Office of Land and Emergency Management, we have an EJ Action Plan<sup>34</sup> and we are doing things called for in the plan. One element of the plan was achieved this week, in fact, with my speech in St. Louis.<sup>35</sup> We need to be doing a lot more outreach, as with my conversation with you today in Memphis.

##### A. Policy Examples

We have a new policy across the Agency for addressing human exposure to lead.<sup>36</sup> You know the devastating effects that lead

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34. U.S. ENV'T PROT. AGENCY OFF. OF LAND AND EMERGENCY MGMT., EJ ACTION PLAN: BUILDING UP ENVIRONMENTAL JUSTICE IN EPA'S LAND PROTECTION AND CLEANUP PROGRAMS (Sept. 2022), [https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan\\_9.2022\\_FINAL-508.pdf](https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan_9.2022_FINAL-508.pdf).

35. *Id.* at 27 (calling for "an EJ discussion . . . added to the plenary lineup" at the next OSC Readiness Training Conference).

36. U.S. ENV'T PROT. AGENCY, EPA STRATEGY TO REDUCE LEAD EXPOSURES AND DISPARITIES IN U.S. COMMUNITIES (Oct. 27, 2022), [https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy\\_1.pdf](https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy_1.pdf).

exposure has had particularly on children for generations. Now, we have an all-Agency effort to reduce lead exposure. Our new proposed Lead and Copper Rule aims to remove 100% of lead service lines in the next ten years.<sup>37</sup> That will be a huge improvement to public health across the country. My own office did something very significant that law students would probably never notice unless I tell you. We issued a guidance in January that we call our “Soil Lead Guidance.”<sup>38</sup> Since 1994, we have had what are called screening levels for lead. Basically, if you have this level of lead in residential soils, like 400 parts per million (ppm), then you should investigate further and perhaps consider cleanup. That had been on the books for 30 years. This year, in our new guidance, we reduced those screening levels from 400 to 200 ppm. And if you are in an area with additional sources of lead, like in Flint, the new screening level comes down to 100 ppm.<sup>39</sup> That is a perfect demonstration of taking cumulative impacts into account in pursuing environmental justice. It also moves the needle significantly in thinking about what is or is not “safe,” what is or is not contaminated, and it probably means that more places with lead contamination will need attention.

Our new Soil Lead Guidance is *guidance*. And lawyers (and law students) will want law. One great place to start is a compendium known as *EJ Legal Tools*<sup>40</sup> compiled by our EPA Office of General Counsel. An addendum to *EJ Legal Tools*, released in 2023, specifically evaluates legal authorities to address cumulative impacts.<sup>41</sup>

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37. See U.S. ENV'T PROT. AGENCY, EPA'S PROPOSED LEAD AND COPPER RULE IMPROVEMENTS FACT SHEET (Nov. 2023), [https://www.epa.gov/system/files/documents/2023-11/lcri-fact-sheet-for-the-public\\_final.pdf](https://www.epa.gov/system/files/documents/2023-11/lcri-fact-sheet-for-the-public_final.pdf).

38. See *Updated Residential Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities*, U.S. ENV'T PROT. AGENCY (Jan. 17, 2024), <https://www.epa.gov/superfund/updated-soil-lead-guidance-cercla-sites-and-rcra-corrective-action-facilities>.

39. *Id.* at 2.

40. U.S. ENV'T PROT. AGENCY OFF. OF GEN. COUNS., EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE (May 2022), <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>.

41. U.S. ENV'T PROT. AGENCY OFF. OF GEN. COUNS., EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE: CUMULATIVE IMPACTS ADDENDUM (Jan. 2023),



At the EPA, we are in fact using legal authorities to address environmental justice, including cumulative impacts. In addition to guidance documents, we are promulgating regulations. For example, EPA Administrator Michael Regan recently signed a new regulation under authority of the Clean Air Act Section 112r<sup>42</sup> known as the Safer Communities by Chemical Accident Prevention Rule.<sup>43</sup> The new rule amends the EPA's Risk Management Program (RMP) regulations<sup>44</sup> to enhance protections for workers and vulnerable communities living near facilities in industrial sectors with high accident rates.<sup>45</sup>

We have new rules coming out to deal with coal ash from power plants. Since the environmental disaster in 2008 with the spill of 5.4 million cubic yards of coal ash from the TVA facility near Kingston, Tennessee,<sup>46</sup> we know there are a lot of challenging issues with coal ash across the country, including right here in Memphis. That is why we are promulgating rules under authority of statutes such as the federal Resource Conservation and Recovery Act ("RCRA")<sup>47</sup> to ensure safe disposal of coal ash, including in closed facilities.<sup>48</sup> You might have heard about PFAS: per- and polyfluoroalkyl substances, commonly known as "forever chemicals." We are promulgating new rules to

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<https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>.

42. Clean Air Act §112(r), 42 U.S.C. § 7412(r).

43. 89 Fed. Reg. 17622 (Mar. 11, 2024) (codified at 40 C.F.R. pt. 68)

44. See 40 C.F.R. pt. 68.

45. For background and materials on the new Safer Communities by Chemical Accident Prevention regulation, see *Risk Management Program Safer Communities by Chemical Accident Prevention Final Rule*, U.S. ENV'T PROT. AGENCY (Mar. 13, 2024), <https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-final-rule>.

46. For background on the Kingston spill, see Cale Jaffe, *The Toxic Legacy of Coal Ash on Southeastern Rivers, Waterways, and Reservoirs*, 40 WM. & MARY ENVTL. L. & POL'Y. REV. 557 (2016).

47. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

48. See *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants*, U.S. ENV'T PROT. AGENCY (Apr. 25, 2024), <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-suite-standards-reduce-pollution-fossil-fuel>; Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments, 80 Fed. Reg. 31,982 (May 18, 2024) (to be codified at 40 C.F.R. pt. 257).

address PFAS under statutory authorities including RCRA,<sup>49</sup> CERCLA,<sup>50</sup> and the Safe Drinking Water Act.<sup>51</sup>

### *B. Environmental Justice Funding*

The EPA has new funding to promote environmental justice through laws including the Bipartisan Infrastructure Law (“BIL”). My own Office of Land and Emergency Management received an additional \$3.5 billion to accelerate cleanup of Superfund sites across the country.<sup>52</sup> Many of these cleanups are occurring right now in communities with environmental justice concerns, such as the Westside Lead Superfund Site in Atlanta, Georgia,<sup>53</sup> and the Southside Chattanooga Lead Superfund site in Chattanooga, Tennessee.<sup>54</sup>

Now if you asked me what’s the coolest thing that I have seen inside of the EPA—and I don’t want to pick among my favorite

49. Listing of Specific PFAS as Hazardous Constituents, 89 Fed. Reg. 8606 (Feb. 8, 2024).

50. *See Biden-Harris Administration Finalizes Critical Rule to Clean Up PFAS Contamination to Protect Public Health*, U.S. ENV’T PROT. AGENCY (Apr. 18, 2024), [https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-critical-rule-clean-pfas-contamination-protect#:~:text=This%20final%20rule%20will%20designate,ensure%20that%20polluters%20pay%20;+Designation+of+Perfluorooctanoic+Acid+\(PFOA\)+and+Perfluorooctanesulfonic+Acid+\(PFOS\)+as+CERCLA+Hazardous+Substances](https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-critical-rule-clean-pfas-contamination-protect#:~:text=This%20final%20rule%20will%20designate,ensure%20that%20polluters%20pay%20;+Designation+of+Perfluorooctanoic+Acid+(PFOA)+and+Perfluorooctanesulfonic+Acid+(PFOS)+as+CERCLA+Hazardous+Substances), 89 Fed. Reg. 39124 (May 8, 2024) (to be codified as 40 C.F.R. pt. 302).

51. PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532 (Apr. 26, 2024) (to be codified as 40 C.F.R. pts. 141–42); *Biden-Harris Administration Finalizes First-Ever National Drinking Water Standard to Protection 100M People from PFAS Pollution*, U.S. ENV’T PROT. AGENCY (Apr. 10, 2024), <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-first-ever-national-drinking-water-standard>.

52. *See* U.S. ENV’T PROT. AGENCY, BIPARTISAN INFRASTRUCTURE LAW: ENVIRONMENTAL REMEDIATION AT SUPERFUND SITES (2022), [https://www.epa.gov/system/files/documents/2022-03/bipartisan-infrastructure-law-fact-sheet\\_investments-in-superfund-remedial-program\\_0.pdf](https://www.epa.gov/system/files/documents/2022-03/bipartisan-infrastructure-law-fact-sheet_investments-in-superfund-remedial-program_0.pdf).

53. *Superfund Site: Westside Lead Atlanta GA*, U.S. ENV’T PROT. AGENCY <https://cumulis.epa.gov/supercpad/CurSites/csinfo.cfm?id=0407160#:~:text=This%20site%20has%20been%20selected,where%20children%20live%20and%20play>.

54. News Release, U.S. Env’t Prot. Agency, EPA to Highlight over \$56 Million in BIL Funding for Southside Chattanooga Lead Site Cleanup at Press Event, (Jan. 19, 2024), [https://www.epa.gov/newsreleases/media-advisory-epa-highlight-over-56-million-bil-funding-southside-chattanooga-lead\\_](https://www.epa.gov/newsreleases/media-advisory-epa-highlight-over-56-million-bil-funding-southside-chattanooga-lead_)

children—but the Brownfields program is about the coolest thing you can imagine. For over twenty years, the EPA has given grants under the Brownfields program to state, tribes, local governments, and nonprofit organizations to assess, clean up, and revitalize communities across the country.<sup>55</sup> But one of the coolest of the coolest, is the Brownfields Job Training Program, which provides funding to nonprofit organizations who train community members to do environmental work in their communities. In December 2022, Deputy Administrator Janet McCabe and I attended a ceremony in Chicago to celebrate one of these graduating classes<sup>56</sup> and it was one of the most moving experiences of my life. Imagine if you could create a program that would help improve the environment and also provide good, stable jobs for many Americans, including people reentering the workforce after incarceration. Through the Brownfields Job Training Program, we are doing that. In 2023, with funding from BIL, the EPA provided \$315 million in Brownfields grants and revolving loan funds.<sup>57</sup>

BIL also provided funding for a brand new grants program known as Solid Waste Infrastructure for Recycling (“SWIFR”),<sup>58</sup> which is providing funding for every state and U.S. territory, plus dozens of tribal governments and local communities, to help plan and implement projects across the country to reduce waste and promote reuse and recycling. Many of these efforts also provide additional

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55. See generally *Brownfields*, U.S. ENV’T PROT. AGENCY (June 11, 2024), <https://www.epa.gov/brownfields>.

56. See *Biden-Harris Administration Announces Over \$342,400 from EPA’s Brownfields Grants to Train Illinois Environmental Workers*, U.S. ENV’T PROT. AGENCY (Dec. 14, 2022), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-over-342400-epas-brownfields-grants-train>.

57. See *Biden-Harris Administration Announces More than \$315 Million Through Investing in America Agenda for Cleanup and Technical Assistance at Polluted Brownfields Sites*, U.S. ENV’T PROT. AGENCY (May 25, 2023), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-more-315-million-through-investing-america>.

58. See generally *Bipartisan Infrastructure Law: Solid Waste Infrastructure for Recycling Grant Program*, U.S. ENV’T PROT. AGENCY (Nov. 15, 2023), <https://www.epa.gov/infrastructure/solid-waste-infrastructure-recycling-grant-program>.

benefits such as reducing food loss and waste, promoting food security, and reducing methane emissions from landfills.<sup>59</sup>

Under the Inflation Reduction Act, many federal agencies including the EPA received even greater funding, particularly to address climate change.<sup>60</sup> This includes creation of the \$27 billion Greenhouse Gas Reduction Fund, which will fund tens of thousands of clean energy projects across the country for years to come.<sup>61</sup> To promote equity in the clean energy transition, the IRA will provide \$7 billion in grants to promote Solar for All, a program of grants to enable millions of low-income households to access affordable solar energy.<sup>62</sup> The IRA also provided \$2 billion in funding for a new Community Change Grants program, focused directly on promoting “environmental and climate justice activities to benefit disadvantaged communities through projects to reduce pollution, increase community climate resilience, and build community capacity to address environmental and climate justice challenges.”<sup>63</sup>

All of this investment will bring transformative change to our country, but the funding opportunities can also be bewildering, especially for communities with limited means to participate in grant competitions. To address that particular concern, we have another great new program called the Thriving Communities Technical Assistance Centers, also known as the “TCTACs.”<sup>64</sup> Through the

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59. For an overview of EPA’s initiatives to reduce Food Loss and Waste, see Sustainable Management of Food, U.S. ENV’T PROT. AGENCY (Aug. 7, 2024), <https://www.epa.gov/sustainable-management-food>.

60. See generally *Inflation Reduction Act*, U.S. ENV’T PROT. AGENCY (Aug. 12, 2024), <https://www.epa.gov/inflation-reduction-act>.

61. See *Biden-Harris Administration Announces \$20 Billion in Grants to Mobilize Private Capital and Deliver Clean Energy and Climate Solutions to Communities Across America*, U.S. ENV’T PROT. AGENCY (Apr. 4, 2024), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-20-billion-grants-mobilize-private-capital-and-0>.

62. *Greenhouse Gas Reductions Fund: Solar for All*, U.S. ENV’T PROT. AGENCY (June 7, 2024), <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all>.

63. *Inflation Reduction Act Community Change Grants Program*, U.S. ENV’T PROT. AGENCY (Aug. 7, 2024), <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants-program>.

64. *The Environmental Justice Thriving Communities Technical Assistance Centers Program*, U.S. ENV’T PROT. AGENCY (May 31, 2024),

TCTACs program, we are paying local organizations to help communities navigate all these funding opportunities. Here in Memphis, we are in EPA Region 4. The Region 4 TCTAC is a consortium by the name of “Resource for Assistance and Community Training in Region 4 on Environmental Justice” (REACT4EJ). The local partner for Tennessee is right here at the University of Memphis. I’m going to meet them today to make sure that there are real live people who are ready to help navigate this stuff. Because we don’t want to burden communities with trying to figure out what is the right grant for their needs and how they should apply for it and manage it.

#### V. ENVIRONMENTAL JUSTICE AND YOU

Last thing: Get a job. Believe it or not, law students, you can get paid to do environmental justice. At the EPA, we have a new campaign called “Be EPA.”<sup>65</sup> If you’re inclined to complain about what an agency is doing or not doing for environmental justice, then join the agency and do better. At the EPA, we are hiring right now. Keep your eye on USAJobs,<sup>66</sup> which posts job openings across the entire federal government, including each headquarters and regional office of the U.S. EPA. We would love to welcome you to the Agency, allowing you to bring your new energy and ideas to the EPA’s continuing mission to protect human health and the environment.

Finally, I can’t come to Memphis without reflecting back on the origin story of environmental justice that begins right here, heralded with mighty and prophetic words:

Let us rise up tonight with a greater readiness.  
Let us stand with a greater determination.  
And let us move on in these powerful days, these days of  
challenge,

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<https://www.epa.gov/environmentaljustice/environmental-justice-thriving-communities-technical-assistance-centers>.

65. *EPA Launches “Be EPA” Recruitment Week: New Video Aims to Expand and Diversify Environmental Workforce and Inspire Next Generation of Environmental Leaders*, U.S. ENV’T PROT. AGENCY (Jan. 31, 2024), <https://www.epa.gov/newsreleases/epa-launches-be-epa-recruitment-week-new-video-aims-expand-and-diversify-environmental>.

66. *See generally* USAJOBS, <https://www.usajobs.gov/>.

[T]o make America what it ought to be . . . .<sup>67</sup>

I hope you know who spoke those words, here in Memphis, on April 3, 1968. Spoken fifty-five years ago, Dr. King's words still ring as true as ever. These *are* powerful days, days of challenge. And *you* can be a part of making America what it ought to be. Thank you for letting me share this powerful day with you.

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67. MARTIN LUTHER KING, JR., *supra* note 6, at 201.