

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, Jeff Landry,

PLAINTIFF,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

DEFENDANTS.

CIVIL ACTION NO. 2:23-cv-00692

**STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' CROSS-MOTION TO DISMISS OR
FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**

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28 C.F.R. §42.10432

40 C.F.R. §7.8033

40 C.F.R. §§7.3532

GLOSSARY

<u>Acronym</u>	Meaning/Full Title/Cite
2022 FAQ	EPA, <i>Interim Environmental Justice and Civil Rights in Permitting, Frequently Asked Questions</i> (Aug. 2022) (Exh. 46)
2023 Cumulative Impacts Addendum	EPA <i>Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum</i> (Exh. 47)
CAA	Clean Air Act, 42 U.S.C. §7401 <i>et seq.</i>
DOJ	U.S. Department of Justice
EPA	U.S. Environmental Protection Agency
June 16 Objection	EPA Objection to Title V Operating Permit Number 3086-V10 (June 16, 2023) (Exh. 84)
LA DOJ	Louisiana Department of Justice
LDEQ	Louisiana Department of Environmental Quality
LDH	Louisiana Department of Health
OEJECR	EPA Office of Environmental Justice and External Civil Rights
Opp.	Defendants' brief in opposition to the State's motion for a preliminary injunction and cross-motion to dismiss and/or for summary judgment, Doc. 29-1
P.I.	The State's brief in support of its motion for a preliminary injunction, Doc. 11-1
Private Special Interest Groups	The plaintiffs in <i>Californians for Renewable Energy v. EPA</i> , No. 4:15-cv-3292, who possess rights under the judgments to which EPA acquiesced, which the State alleges violates the private non-delegation doctrine.
Title VI	Title VI of the Civil Rights Act of 1964, 42 U.S.C. 42 U.S.C.A. §2000d <i>et seq.</i>
VRA	Voting Rights Act of 1965, 52 U.S.C. §10101 <i>et seq.</i>

INTRODUCTION

In law, as in life, actions often speak louder than words. So it is here. Defendants’ (hereafter, “EPA’s”) brief advances a multitude of arguments contending that the State’s claims are unreviewable and meritless. As Defendants tell it, there is “nothing to see here.” But a mere *six days* after the State moved for a preliminary injunction, EPA abruptly abandoned the Title VI investigations specifically raised in the State’s claims, and EPA did so in a manner that defies all possible explanations except as a frantic response to the State’s putatively meritless claims.

EPA’s abandonment of its enforcement efforts is all the more remarkable given that significant policy gains were *readily in its grasp*, at least if EPA’s principal objective were anything other than avoiding judicial review here. EPA could have achieved substantial relief from Louisiana Department of Environmental Quality (“LDEQ”) and Louisiana Department of Health (“LDH”) simply by accepting their last offers/redlines. Those on-the-table offers would have constituted a “major win” and a “tremendous step forward” in the words of EPA-aligned environmental groups, and all EPA had to do to achieve them was say “yes.” Exh. 62, 68.¹ Instead, EPA walked away *completely*, thereby achieving *precisely nothing* for its year-plus-long investigation—save the opportunity to argue mootness here. Those are not the actions of an agency with nothing to fear from the State’s challenges.

EPA’s actions betray the severe legal vulnerability of its disparate-impact regulations. Thus, as the State correctly predicted, EPA now “raise[s] an avalanche of arguments contending that [its regulations/actions] are not reviewable or that this Court lacks jurisdiction.” *See* Doc. 11-1 (“P.I.”) at 12. EPA’s shotgun blast of defenses all fail.

As the “object” of the regulation at issue here, the State’s standing is “self-evident.” *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002). The State further has cognizable injuries from (1) Defendants’ violation of the State’s right under the Spending Clause not to be bound by ambiguous

¹ Unless otherwise noted, all references to “Exh.” are to exhibits of the Seidemann Declaration, Seidemann Supplemental Declaration, or Burdette Declaration, which have sequentially numbered exhibits in a single sequence.

conditions, (2) being subject to unconstitutional proceedings infected by a non-delegation doctrine violation, (3) compliance costs from Defendants' mandates, and (4) the credible threat of enforcement that existed on the date this suit was filed. Any *one* of these bases for standing would suffice here. Together they removed any conceivable doubt as to the State's standing.

Equally unavailing are EPA's transparent and shameless attempts to moot this case. To begin with, the State continues to suffer ongoing injury, notwithstanding EPA's litigation-induced abandonment of its investigations. Defendants' disparate-impact and cumulative-impact requirements continue to be in legal force, purporting to bind the State and imposing compliance costs on an everyday basis. LDEQ, for example, must consider disparate impacts for *every* permit it issues—not just those that EPA will subsequently investigate. Indeed, EPA specifically vetoed LDEQ's issuance of a Clean Air Act ("CAA") permit on explicit disparate-impact and cumulative-impact grounds on June 16—*after* this suit was filed—demonstrating the State's continued exposure to liability and enforcement under Defendants' regulations. This ongoing injury defeats any mootness.

But even if this case would otherwise be moot, it readily falls within the exception for voluntary cessation, which "evaluates the risk that a defendant is engaging in 'litigation posturing' to avoid judicial review." *Yarls v. Bunton*, 905 F.3d 905, 910 (5th Cir. 2018). Defendants' actions are transparently just that: an abrupt, 180-degree turn that is inexplicable *except* as "litigation posturing to avoid judicial review." *Id.* That's not just the State's view, but also the candid assessment of Defendants' ideological allies and seemingly every third-party commentator. Accepting Defendants' characterization of their complete capitulation as non-litigation-based—a contention tellingly advanced without *any* sworn declaration attesting to EPA's actual motivations and deliberations—would require this Court "to exhibit a naiveté from which ordinary citizens are free." *Department of Commerce v. New York*, 139 S.Ct. 2551, 2575 (2019) (citation omitted). Suffice it to say, Defendants' remaining procedural defenses fare no better.

Defendants’ arguments on the merits are equally lacking. As to the non-delegation claims, EPA implausibly argues that the Private Special Interest Groups only act in an advisory or concurring role. That contention simply blinks reality as to who is pulling the strings. In truth, Sierra Club enjoyed an *absolute veto* as to how federal governmental power would be exercised at a critical juncture—so much so that EPA had little choice but to engage in horse-trading to regain its delegated-away power on a one-off basis. EPA’s resort to bartering and haggling to regain power it *could never constitutionally give away in the first place* powerfully demonstrates the constitutional violation.

The State’s disparate-impact claims are most readily resolved under the Spending Clause. Supreme Court and Fifth Circuit precedent—wholly ignored by Defendants—make incontestably clear that the Spending Clause precludes imposition of *any and all* conditions that are not *unambiguously* established by the *statutory* text. Here, Title VI unambiguously prohibits only *intentional discrimination*—a proscription that the State accepts with enthusiasm. But neither §601 nor §602 establishes any disparate-impact liability or Defendants’ authority to impose such liability—let alone does so *unambiguously*. Defendants try to escape this result by claiming that the Spending Clause only demands that statutes establish the existence of “a condition” that is unambiguous, Opp.47 (emphasis added), but the Supreme Court has repeatedly rejected that premise—including in *Arlington Central Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006) and *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S.Ct. 1562 (2022). Indeed, *Cummings* held as much specifically for Title VI. The Fifth Circuit then made crystal clear that the required clarity “must come directly from the statute,” not regulations. *Texas Educ. Agency v. U.S. DoEd*, 992 F.3d 350, 362 (5th Cir. 2021).

But even under *de novo* review, it is clear Defendants lack authority under §602 to impose disparate-impact liability. Section 602 only gives them authority to “effectuate” §601—which only prohibits *intentional* discrimination. Imposing disparate-impact liability does not “effectuate” that prohibition, but rather transforms it into something radically different. That is made clear by the lack

of a “good faith” defense: because §601 prohibits only intentional discrimination, any regulation permitting liability in the teeth of provable absence of discriminatory intent necessarily *flouts* rather than “effectuates” §601’s prohibition on intentional discrimination.

The State’s disparate-impact claims are powerfully supported by two other considerations. *First*, Defendants’ disparate-impact regulations invite *at least* severe doubts as to their constitutionality. That much is made plain by (1) *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)—a case cited prominently by the State, to which Defendants have no apparent response and (2) *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (“Fair Admissions”)*, 143 S.Ct. 2141 (2023), which was decided after the State’s motion and which makes plain that Defendants’ intentionally race-conscious regulations are of doubtful constitutionality *at best*. *Second*, Defendants’ regulations fail under the major questions doctrine. Defendants do not deny that any of the *three independent triggers* identified by the State (P.I. at 35-36) are *all* present here, demanding application of the doctrine. Nor do Defendants even attempt to argue that the requisite clear congressional authorization exists if the doctrine applies.

Finally, EPA’s defense of its Extra Regulatory Requirements—now principally its cumulative-impact mandates—rests on their reality-blinking contention that those requirements are mere non-binding guidance. EPA’s actions and actual statements in their “guidance” bely those contentions.

For all of these reasons, this Court should deny Defendants’ motion and enter judgment for the State.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO REVIEW AND ENJOIN DEFENDANTS’ ACTIONS

Defendants brief (at 11-35) unleashes an astounding *25 pages* of putative procedural defenses—almost literally DOJ’s entire administrative law playbook. Although voluminous, all fail.²

² The State specifically argued that sovereign immunity was waived for all the States’ claims. *See* P.I. at 12. Defendants never contest this point and do not argue sovereign immunity themselves.

A. The State Has Article III Standing

Defendants raise (at 11-24) a multitude of arguments that the State lacks Article III standing. While these issues are somewhat esoteric and complex, their resolution here is clear: the State has standing on multiple independent grounds, any *one* of which suffices.

1. As The Object Of Defendants’ Regulations, The State Has “Self-Evident” Standing

The State’s standing here is straightforward here because the State is “an object of the action ... at issue” as a regulated party. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). When that is so, “there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Id.* at 561-62. Indeed, in this context, “standing to seek review of administrative action is *self-evident*”—so much so that plaintiffs typically need not “supplement the record” with any standing evidence *at all*. *Sierra Club v. EPA*, 292 F.3d at 899-900 (emphasis added); *accord Duarte v. City of Lewisville*, 759 F.3d 514, 518 (5th Cir. 2014) (“It follows from *Lujan* that if a plaintiff is an object of a government regulation, then that plaintiff ordinarily has standing to challenge that regulation.”). As a practical matter then, this Court can begin *and end* its standing analysis with the recognition that the State is the object of regulation here. *See also Prop. Cas. Insurers Ass’n of Am. v. Donovan*, 66 F. Supp. 3d 1018, 1043-44 (N.D. Ill. 2014) (recognizing object-of-regulation/“self-evident” standing by companies that were “‘objects’ of the [challenged HUD] Disparate Impact Rule.”).

This venerable self-evident-standing principle makes perfect sense: if a regulation is unlawful, the imposition of *any* burden by it constitutes “an invasion of a legally protected interest.” *Lujan*, 504 U.S. at 561. And regulations invariably create compliance, familiarization, and planning costs—all of which are cognizable and redressable injuries that flow from illegal regulations. For that reason, “[a]n increased regulatory burden typically satisfies the injury in fact requirement.” *Contender Farms, L.L.P. v. USDA*, 779 F.3d 258, 266 (5th Cir. 2015) (holding that plaintiffs had object-of-regulation standing).

This object-of-regulation doctrine reflects common sense. Much as the object of a punch or a headbutt has self-evident standing to assert a tortious battery claim against his batterer, the State, as an object of Defendants’ unlawful regulations and actions, has obvious Article III standing to challenge the legality of those actions/regulations, which were foisted upon it *directly*. Defendants tellingly make no effort to address the State’s standing as an “object of the action ... at issue,” *Lujan*, 504 U.S. at 561—and certainly do not deny that the State is just such an “object.” Nor could they have been unaware of the object-of-regulation/self-evident-standing doctrine: the State’s prior filings repeatedly cited it. *See* P.I. at 12-13; Complaint ¶203. They simply have no answer to it.

2. Defendants’ Violations Of Louisiana’s Rights Under The Spending Clause Confers Standing

The State also has sovereign injury under the Supreme Court’s Spending Clause jurisprudence. Under those precedents, Congress’s power to impose conditions on States through spending grants is subject to critical limitations. In particular, the State has a specific and concrete right to clarity in Spending Clause-based conditions. That right to clear conditions has two crucial facets here: (1) a pre-agreement right to clarity in the contours of the conditions and (2) a post-agreement right not be to be bound by any restriction that is not *unambiguous* from the *text* of the statute itself. Put differently, the federal government violates the Constitution *either* when (1) Congress presents the States with unclear conditions *or* (2) the Executive or Judiciary tries to enforce a Spending Clause condition against the States that goes beyond what the statutory text of the condition unambiguously establishes. These are *sovereign* rights that the States possess under our “system of dual sovereignty between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

A classic example of the latter type of right/violation is *Arlington Central*. There, the Individuals with Disabilities Education Act (“IDEA”) unambiguously told States that acceptance of relevant federal funds would make them liable to prevailing parties for “reasonable attorneys’ fees as part of the costs.” 548 U.S. at 293-94. There was accordingly no confusion as to liability for attorneys’ fees in

IDEA cases, and no sovereign injury on that front. Nor was the existence of *a* condition contestable. But when the Judiciary tried to extend that liability to expert fees, which the IDEA did not establish unambiguously, that expansion violated the Spending Clause; instead, the States could be bound *only* if “the IDEA g[ave] a State *unambiguous notice* regarding liability for expert fees.” *Id.* at 301 (emphasis added); *accord id.* at 296 (Statute must “furnish[] clear notice regarding the liability at issue.”).

Unsurprisingly then, violation of these sovereign constitutional rights creates cognizable injury. Thus, in *Arizona v. Yellen*, 34 F.4th 841, 851-53 (9th Cir. 2022), the Ninth Circuit held that whenever the federal government “extends a federal grant with ambiguous ... terms to the States, ... this offer offends state sovereignty and gives rise to a cognizable injury.” The Eleventh Circuit reached the same conclusion in *West Virginia v. U.S. Dep’t of the Treasury*, 59 F.4th 1124, 1136 (11th Cir. 2023). That is essentially—*by definition*—how constitutional rights work: when violated, they give rise to injury that courts can redress. After all, “[i]t is a settled and invariable principle, that every right, when withheld, must have a remedy.” *Marbury v. Madison*, 5 U.S. 137, 147 (1803).

So it is here: (1) the State has a constitutional right to not to be bound by any condition in Title VI beyond what its *statutory text* unambiguously establishes, (2) Defendants’ disparate-impact regulations violate that right by doing just that, and (3) the State therefore has cognizable sovereign injury. EPA resists this obvious result by suggesting the State is improperly relying on subjective confusion—arguing (at 17) that the State lacks standing because the “assurances the State signed are unambiguously clear.” But that is mistaken on three levels. *First*, the State does not merely possess a right to clarity in the conditions, but also the right not to be bound by any restriction not unambiguously clear in the statutory text. *Second*, neither regulations nor signed assurances can provide the necessary clarity—only the statutory text can. *Texas Educ. Agency*, 992 F.3d at 361; *see also* P.I. at 33; *infra* §III.C. *Third*, neither *Arizona* nor *West Virginia* rely on any theory of subjective confusion, as Defendants do, but instead turn entirely on the *objective effects* of the statutory text. And both decisions

make clear that *every time* that Defendants extend an offer of a funding grant with unconstitutional strings attached—something that Defendants are constantly doing by offering grants that bind the States to ever-longer terms of Title VI compliance—that offer creates new cognizable injury.³

Consider also the absurd implications of Defendants’ position. Under their logic, the Executive can violate the Spending Clause with impunity by imposing conditions beyond what the statutory text will unambiguously bear *as long as it is clear enough about its intent to do so*—thereby avoiding any subjective “confusion” by the States. That cannot be—and is not—the law, as *Arizona* and *West Virginia* make plain. Indeed, by Defendants’ logic, the Arlington Central School District should have lacked standing since *longstanding* circuit precedent from across the Hudson River gave the district clear (albeit erroneous) notice that acceptance of IDEA funds would subject the States to liability for expert fees. *See Arons v. New Jersey State Bd. of Educ.*, 842 F.2d 58, 62 (3d Cir. 1988).

Ultimately, the issue here is not one of subjective “confusion” but rather of objective *authority*. The Executive is wholly without constitutional power to impose Spending Clause conditions that exceed what Congress has unambiguously provided in the statutory text, and the States have a corresponding right not to be so bound. *Arlington Central*, 548 U.S. at 296, 301. Defendants’ trampling of that fundamental constitutional limitation creates cognizable injury to the State.

3. Subjecting The State To Proceedings Infected By Private Non-Delegation Doctrine Violations Confers Standing

For similar reasons, the State has suffered cognizable injury from EPA’s violations of the non-delegation doctrine: *i.e.*, the State had a right to be free of the exercise of federal governmental power dictated by private parties and EPA’s violation of that right injured the State. As the State has explained (P.I. at 18-19), “‘being subjected’ to ‘unconstitutional agency authority’ ... [constitutes] ‘a here-and-

³ For this reason, EPA’s reliance (at 17) on *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816, 825 (5th Cir. 2022) is unavailing. The State is not relying upon its own subjective confusion to establish standing, but rather Defendants’ violation of the State’s constitutional right not to be bound by any Spending Clause condition beyond what its statutory text unambiguously provides. Nor does *Perez* involve the Spending Clause or any related considerations whatsoever.

now injury.” *Axon Enter., Inc. v. FTC*, 143 S.Ct. 890, 903 (2023) (citations omitted). Indeed, *even in Defendants’ own telling* the Article III injury was realized in *Axon* when the plaintiff was “‘subject[ed] to an illegitimate proceeding, led by an illegitimate decisionmaker,” Opp. at 14 n.8 (quoting *Axon*, 143 S.Ct. at 903). *That is this case*: the State specifically argued that it was (1) “‘subjected to an illegitimate proceeding”—*i.e.*, investigations infected by a non-delegation doctrine violation, and one which was (2) “‘led by an illegitimate decisionmaker”—*i.e.*, the Private Special Interest Groups pulling EPA’s strings. EPA thus flunks its own articulation of the *Axon* standard.

Despite the State falling within EPA’s own characterization of *Axon*’s holding, the agency tries (at 14 n.8) to distinguish *Axon* on the basis that the State “‘has not been compelled to take any action (unwanted or otherwise).” But the injury in *Axon* was not predicated upon Axon taking any action. In any event, much like *Seila Law*, EPA did issue a “‘civil investigative demand”” and the State was required “‘to provide documents it would prefer to withhold.”” Opp at 14 n.8 (quoting *Seila Law LLC v. CFPB*, 140 S.Ct. 2183, 2196 (2020)); Exh. 18. EPA’s attempted distinction of *Seila Law* (at 14 n.8) on the facts is thus factually erroneous. (How EPA’s April 26 document demands do not qualify as “‘civil investigative demands” in the agency’s mind also goes entirely unexplained.)

More generally, EPA’s contention that the State was not required “‘to take any action” simply blinks reality. The potential penalty for violating Title VI is loss of all relevant federal funds—a veritable Sword of Damocles. The idea that the State could flatly refuse to participate in informal negotiations and defy its document demands is, quite frankly, absurd. Has any State *ever* done that? EPA certainly identifies no such example, and instead admits that *no one* has ever run that colossal risk in “‘the fifty years since EPA adopted its Title VI implementing regulations.” Opp.8.

Instead, the State had little choice but to engage in a drawn-out process: producing documents upon demand, reviewing and redlining proposed settlement agreements, responding to the Letter of Concern, joining innumerable conference calls, and indulging EPA’s pronounced habit of cancelling

meetings at the last minute. Seidemann Decl. ¶¶ 22-76; Exh. 18-25, 81-83. As a practical matter, EPA’s actions forced the State to take all these actions. Nor were these actions costless, Burdette Decl. ¶¶ 16-25, and the irrecoverability of those costs establishes irreparable injury. *See* P.I. at 41-42.

Federal courts have jurisdiction to resolve these sorts of disputes and “do not require plaintiffs to ‘bet the farm’ ... before ‘testing the validity of the law.’” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 490 (2010) (citation omitted). But that is precisely what EPA seeks to mandate here: requiring the State to expose itself to potentially ruinous penalties as the price for obtaining judicial review. Article III demands no such thing and instead permits pre-enforcement challenges.

EPA further contends (at 14-16) that standing is lacking because the State’s injury is speculative, focusing on the agency’s post-suit capitulation of its then-pending Title VI investigations. EPA is mistaken. Standing is judged “under the facts existing when the complaint is filed.” *Duarte*, 759 F.3d at 520 (quoting *Lujan*, 504 U.S. at 569-70 n.4). Here, the State was subject to EPA’s Title VI investigations in which private groups were pulling the strings and the non-delegation doctrine violation was thus ongoing when the complaint was filed. The State’s exposure to those constitutionally tainted proceedings on May 24, 2023 constituted “here-and-now injury.” *Axon*, 143 S.Ct. at 903. EPA’s post-Complaint surrender on the pending Title VI investigations cannot defeat the State’s standing. Instead, it could be relevant only to EPA’s mootness argument—which fails as set forth below. *See infra* §I.B.⁴

4. Defendants’ Disparate-Impact Regulations And Extra-Regulatory Requirements Create Compliance Costs That Establish Standing

The State’s costs in complying with Defendants’ disparate-impact regulations also readily establishes the State’s standing here. It is a truism that “complying with a regulation later held invalid

⁴ EPA misapprehends (at 13-14) the import of its horse-trading non-public information. The fact that EPA felt compelled to engage in a *quid pro quo*—and characterized itself to be doing just that (which its brief does not deny)—confirms the non-delegation violation and resulting injury. Why would EPA need to barter with the Private Special Interest Groups to *regain* its authority to extend negotiations on a one-off basis if the agency had not already delegated that authority away wholesale in the first place? That constitutional violation inflicted “here-and-now injury,” *Axon*, 143 S.Ct. at 903.

almost *always* produces the irreparable harm of nonrecoverable compliance costs.” *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (cleaned up) (emphasis in original). And so it is here. Defendants’ contrary arguments (at 21-22) are flawed both conceptually and factually. And they also contradict EPA’s own explicit statements to Congress in seeking massive funding increases specifically to perform the analysis that it brazenly contends in this Court can be done without cost.

While EPA focuses on the State’s costs in enforcement proceedings, Defendants’ mandates create compliance costs *far* more broadly and frequently than that. Indeed, while Defendants have unceremoniously (and strategically) capitulated their pending investigations, they have *not* disavowed their position that LDEQ must comply with disparate-impact mandates *every* time it issues a permit. That is something that LDEQ does *regularly*. Burdette Decl. ¶¶17. And each time it performs the demanded, not-costless disparate-impact analysis, the State incurs new injury in the form of new compliance costs. *See id.* ¶¶17-22.

The required disparate-impact analysis imposes costs separate from complying with Title VI’s intentional-discrimination prohibition, which requires only confirmation of the absence of illicit intent. That is quite cheap to comply with since a decision-maker *knows* whether its decision is motivated by unlawful animus. Ascertaining one’s *own* intent is neither complicated nor costly.

Not so for disparate-impact compliance. By its very nature, avoiding disparate-impact liability requires regulated entities to conduct statistical analysis to understand whether there is a disparate racial impact that may need to be addressed. *See, e.g., Donovan*, 66 F. Supp. 3d at 1043-44 (finding standing based on compliance costs resulting from challenged disparate-impact rule because such mandates “require the [regulated entities] to begin collecting and reviewing information regarding applicants’ race, color, [etc.] to monitor their compliance with the Rule” and thereby “*causes [the regulated parties] to incur costs.*” (emphasis added)). Indeed, DOJ’s own Title VI Legal Manual recognizes that “statistical evidence is often necessary” to comply with disparate-impact mandates. Exh. 61 at 18.

Nor is running such statistical analyses costless: it requires gathering data, coding it, designing proper regression analysis, and analyzing the results. *See Donovan*, 66 F. Supp. 3d at 1043-44. Indeed, merely skimming EPA’s and DOJ’s guidance on disparate-impact requirements—with its page-long flow chart and 58 footnotes (EPA) and 138 pages of detail (DOJ)—is sufficient to dispel any conceivable doubt that Title VI disparate-impact compliance could be accomplished without cost. Exh. 40 at 11-21; Exh. 61. So too with EPA’s extraordinarily complex cumulative impacts “guidance” documents. Exh. 46-47; Burdette Declaration ¶¶23-24. And even “a dollar or two” of injury suffices to establish standing. *Sprint Commc’ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 289 (2008).

Underscoring the ubiquity of EPA’s disparate-impact and cumulative-impact mandates, EPA *explicitly* objected to another LDEQ permit on June 16 on those grounds *after* this suit was filed, and has not withdrawn that objection (unlike its investigations). *See* Exh. 84 (“June 16 Objection”). In doing so, EPA demanded that the State must undertake analysis under “civil rights regulations” to avoid “unjustified discriminatory effect” (*i.e.*, Title VI disparate-impact mandates). *Id.*⁵ EPA even added a cumulative-impacts demand, insisting that the State consider “whether the community is *already disproportionately impacted* either by public health or environmental burdens.” *Id.* at 2 (emphasis added). Does EPA *really* think the State could perform all that analysis without cost? It can’t, as the Burdette Declaration makes clear. *See* Burdette Declaration ¶¶18-25. Indeed, the now-Secretary of LDH estimated that compliance with EPA’s disparate-impact-related demands would “cost[] several million dollars.” Seidemann Decl. ¶71.

⁵ EPA strangely contends (at 22) that the State’s compliance costs are the product of “self-inflicted expenditures.” That is unserious and is comprehensively belied by EPA’s repeated *demands* that the State conduct disparate-impact analysis—reflected in its regulations, its guidance documents, its letter of concern, its June 16 Objection, its disparate-impact-based document demands, and innumerable statements in informal negotiations. The costs resulting from complying with EPA’s *demands* are inflicted *by EPA*—not the State itself.

EPA’s June 16 Objection further belies EPA’s categorical contention (at 1) that the State “cannot point to a single action undertaken by EPA against Louisiana or any of its agencies that depend on the disparate-impact regulations.” EPA’s contention is further contradicted by the document demands that EPA sent the State. Exh. 18. And, more generally, EPA’s demand that the State avoid disparate impacts in *all* permitting decisions are further such actions.

More generally, EPA’s premise that disparate-impact analysis could be costless flouts the agency’s *own understanding*—which is manifestly the opposite. EPA sought from Congress an additional \$11.6 million and 50 new full-time employees for fiscal year 2023 to “address actions, policies, and practices by recipients of EPA funding that have a *discriminatory impact* on overburdened and disadvantaged communities,” Exh. 52 at 393-94 (emphasis added)—*i.e.*, to analyze and enforce Title VI disparate impacts, including cumulative disparate impacts. It similarly seeks “an additional \$42.3 million and 9.5 FTE [full-time employees]” for fiscal year 2024 to “to modernize [EPA’s] national enforcement and compliance data system and to expand compliance monitoring efforts to address environmental justice issues.” Exh. 53 at 241.

Much of that new money is explicitly for the purpose of performing “affirmative compliance reviews to address the impacts of potentially discriminatory activities on overburdened communities,” Exh. 53 at 53; *accord* Exh. 52 at 390-94—*i.e.*, EPA will *inter alia* conduct the same disparate-impact analysis as the grant recipients to see if EPA reaches the same conclusion. *Id.* And just as that duplicated analysis is not free for EPA to conduct, it is equally not costless for the State to do so.

In the end, it is rather astounding that EPA would advance to this Court arguments built on a disparate-impact-analysis-is-costless premise that the agency plainly *does not believe itself*—and is contrary to what it told Congress. EPA understands all too well that this disparate-impact analysis is not free. Its willingness to advance arguments contrary to that clear understanding is deeply (if inadvertently) revealing of the liberties with facts, law, and common sense that its arguments take here.

5. The State Also Has Standing Based On The Threat Of Enforcement

The State also has standing to assert its claims against EPA based on the “credible threat” of enforcement by EPA that existed on the day that this suit was filed. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *Duarte*, 759 F.3d at 520 n.3 (standing evaluated at time of complaint’s filing).

When this suit was filed, there is no doubt that the State faced just such a credible threat of

enforcement: EPA (1) had accepted complaints against LDEQ and LDH, (2) issued a letter of concern with detailed allegations of Title VI disparate-impact violations and demanded that the State “[c]onduct cumulative impacts analyses,” (3) was drafting findings of violations, and (4) was set to move to formal enforcement proceedings a mere 48 days after the Complaint was filed, on July 11. Exh 11 at 3-5; Exh. 22-23; Seidemann Decl. ¶¶18, 73. That is not a “general threat of prosecution” as EPA contends (at 19), but one *specifically targeted* at the State. Nor does the State need to show specific targeting in any event. *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 925 (5th Cir. 2023) (“[C]ourts allowed litigation to proceed based on a credible-threat analysis without a showing of specific targeting.”).

EPA does not appear to genuinely deny that a credible threat of enforcement existed *on May 24, 2023*. Instead, its analysis (at 18-21) appears directed at the state of the world *after* it had surrendered away all of its pending investigations, thereby attempting to smuggle post-suit actions into the standing analysis. But that is *not* when Article III standing is evaluated. *Duarte*, 759 F.3d at 520 n.3. Its *only* potential relevance is to EPA’s mootness arguments, which lack merit. *See infra* §I.B. But even under EPA’s erroneous view that the threat of enforcement is evaluated for standing purposes based on current facts, the State *still* faces a credible threat *now* for five reasons.

First, EPA’s June 16 Objection makes plain that EPA’s intent to enforce its mandates against the State is an *ongoing and absolute certainty*. *See* Exh. 84. That objection—which carries the force of law—makes unequivocally clear that EPA *is* enforcing the challenged disparate-impact and cumulative-impacts regulations against the State and has *not* abandoned its intent to do so. *Supra* at 12.

Second, Defendants have *not* disavowed their position that States must comply with their challenged mandates when issuing permits or taking other relevant actions. That “refusal to disavow enforcement ... is strong evidence ... that [the State] face[s] a credible threat” of enforcement. *California Trucking Ass’n v. Bonta*, 996 F.3d 644, 653 (9th Cir. 2021), *cert. denied* 142 S.Ct. 2903 (2022); *see*

also Seals v. McBee, 898 F.3d 587, 592 & n.9 (5th Cir. 2018) (“Whether the government disavows prosecution is a factor in finding a credible threat of prosecution.”). Absent a clear disavowal that EPA will not enforce *any* disparate-impact or cumulative-impact mandate against the State—which its brief tellingly refuses to supply—the risk of enforcement against the State is manifest.

Third, EPA’s recent and dramatic expansion of its Title VI enforcement efforts in the name of “environmental justice” supports the State’s standing. EPA has recently created the alphabet-soup Office of Environmental Justice and External Civil Rights (“OEJECR”), expanded its head count, and sought millions of dollars from Congress to expand further its Title VI enforcement. Exh. 8; Exh. 52 at 393-94; Exh. 53 at 241. It also has remarkably elevated that office to equal standing as the Air, Water, and Chemical Safety and Pollution Prevention Offices—*i.e.*, the offices tasked with carrying out the *actual environmental protection* mission of the Environmental Protection Agency. Exh. 8.

And Defendants have also vastly expanded their Title VI enforcement efforts against States, successfully coercing Michigan, Missouri, and Alabama into Title VI settlements in the last year alone. *See* Exh. 54-57. And even after their tactical retreat here, EPA has instituted a new Title VI enforcement action against Delaware on September 8. Exh. 67. EPA’s recent budget request also makes clear the agency’s sweeping disparate-impact ambitions. In it, EPA commits itself to extracting from *all* States “*commitments to address disproportionate impacts* in all written agreements between EPA ... and states” in the next three years. Exh. 53 at 48 (emphasis added). Similarly, EPA’s “Journey to Justice” tour in 2021 makes perfectly clear that the agency has placed Louisiana squarely in its crosshairs for future enforcement actions. *See* Exh. 1-3.

Fourth, EPA’s contention (at 19) that standing is lacking because the State “does not express any intention to engage in conduct that amounts to disparate-impact discrimination” is mistaken both legally and factually. On the law, “Nothing in [the Supreme Court’s] decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law.”

Contender Farms, 779 F.3d at 267-68 (quoting *Susan B. Anthony List*, 573 U.S. at 163). Thus, in *Contender Farms* the plaintiffs were not required to confess to soring horses to obtain standing to challenge anti-horse-soring regulations; instead they only needed to show that they “intend[ed] to participate in these events [certain horse competitions] in the future.” 779 F.3d at 68.⁶ Here it is undeniable that LDEQ intends to participate in the sort of actions that could lead to EPA enforcement: *i.e.*, granting environmental permits that are subject to Title VI compliance.⁷

On the facts, Defendants’ enforcement priorities are now so warped that virtually *any action* could become a target of enforcement. Recall what is *undisputed* about the CAA permits triggering EPA’s investigations here. They: (1) complied with *all* substantive environmental standards, (2) *reduced* allowable air emissions, (3) thereby produced environmental benefits in manner *disparately benefiting* racial minorities, and (4) their issuance could have been stopped by EPA, but the agency declined to object then. If EPA is willing to initiate Title VI enforcement proceedings in this context—with *positive disparate benefits*—virtually *any* permit granted by the State could trigger an enforcement action.⁸

Fifth, EPA’s contention (at 20) that no person or entity in the United States faces a credible risk of enforcement because no Title VI complaint has ever “reached the enforcement stage” misapprehends the obvious import of that remarkable fact. As explained above (at 9-10), the reason

⁶ EPA’s reliance (at 18-19) on *Zimmerman v. City of Austin, Texas*, 881 F.3d 378 (5th Cir. 2018) is misplaced. There, the plaintiff “failed to establish a serious intention to engage in conduct” at issue, and thus lacked a credible threat of enforcement. Here, there is no doubt that the State intends to engage in granting permits and funding requests, and thus “intend[s] to participate in these [activities] in the future.” *Contender Farms*, 779 F.3d at 68. Nor does the State need to show that its activities *would* violate disparate-impact mandates, only that those activities are “‘arguably proscribed’ by the law.” *Susan B. Anthony List*, 573 U.S. at 162 (emphasis added) (citation omitted).

⁷ EPA also fails to account for the fact that the State is largely bringing *facial* claims. “Whereas ‘there must be some evidence that a rule would be applied to the plaintiff in order for that plaintiff to bring an as-applied challenge,’ *that is not the case for facial challenges*.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 334 (5th Cir. 2020) (citation omitted) (cleaned up) (emphasis added). Instead, “‘courts will assume a credible threat of prosecution in the absence of compelling contrary evidence.’” *Id.* (citation omitted). Defendants do not even attempt to rebut that presumption here.

⁸ Defendants’ skewed enforcement priorities are similarly shown by the settlement they browbeat out of Alabama. As part of that agreement, Alabama was prohibited from enforcing its *criminal laws against illegal sewage discharges*, purely in one county that is majority minority—thereby exposing those county residents to greater risk of adverse health impacts from sewage pollution. Exh. 57. That Defendants did so in the name of enforcing Title VI is deeply illustrative of how ordinary activities—such as enforcing environmental laws against unlawful sewage discharges—risk enforcement actions by Defendants.

that has never occurred is that actual enforcement is such a quintessential Sword of Damocles that targets of Title VI investigations almost invariably accede to the Executive's demands—much as a nuclear arsenal that is never used still functions as a powerful deterrent.

Defendants thus, for example, had no apparent trouble securing settlements from Alabama, Michigan, and Missouri in the last twelve months alone. *Supra* at 15. But if EPA were correct that there was no credible threat of enforcement, those States could simply have told Defendants to pound sand rather than accede to resolution agreements. None did, given that manifest risk. Nor are States required to “bet the farm” to obtain judicial review of the legality of the proverbial guns that Defendants have placed to their heads. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007).⁹

6. The State Has Standing To Assert Claims Against DOJ

The State has standing to challenge DOJ's disparate-impact regulations for the same essential reasons as apply to EPA: (1) the State's Department of Justice is the object of those DOJ regulations, (2) DOJ's attempt to impose disparate-impact liability exceeds the unambiguous text of Title VI thereby causing sovereign injury, and (3) the Louisiana Department of Justice is bound to Title VI by funding grants from DOJ and itself takes actions that are subject to DOJ's disparate-impact mandates, which result in compliance costs. *See* Sinquefield Decl. ¶¶ 3-9.

⁹ *Medimmune* is particularly instructive here. In that case, the Court held that a patent licensee (Genentech) had standing to challenge the validity of the patent it was licensing—even though Genentech could simply have continued making royalty payments and thereby rendered the threat of infringement liability “at least remote, if not nonexistent.” 549 U.S. at 120-22, 126-37. Because Genentech was bound by the terms of the license for its duration absent judicial relief, standing and ripeness existed because the “threat-eliminating behavior was effectively coerced” and the plaintiff was still bound by the terms of the license absent invalidation of the patent. *Id.* at 129.

The same analysis demonstrates standing exists here: by accepting federal funds, the State is bound by the terms of Title VI and its implementing regulations (if valid) for the duration of the grants and is coerced by the possibility of losing federal funds into complying with them. That binding effect establishes a “case or controversy” that permits the State to challenge the validity of the disparate-impact and cumulative-impact mandates under *MedImmune*. Just as Genentech did not need to “to terminate or be in breach of its license agreement before” seeking judicial review, the State need not violate or terminate its federal funding grants before seeking review of the lawfulness of the conditions to which Defendants purport to bind it. *Id.* at 128-29 (“[W]here threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.”). Instead, States may challenge the validity of the Title VI regulations much as Genentech could challenge the validity of MedImmune's patent.

7. The State Faces Imminent Harms

Defendants' contentions (at 14-15, 18-19) that the State's harms are not sufficient imminent also lack merit, and again fail to analyze standing from the facts that *existed when the State's complaint was filed*. On that day, the non-delegation violation was not merely imminent in the future, but *actually ongoing*. *Supra* at 8-10. In addition, EPA was threatening to issue findings of a violation within 48 days (by the July 11 deadline) if the State did not agree to a settlement agreement. *See* Exh. 18.

The imminence of the threatened harms is further underscored by the fact that not even *one month* passed before EPA specifically objected to a permit issued by the State on disparate-impact and cumulative-impacts grounds, *supra* at 12—an objection that carried the force of law, *see* 42 U.S.C. §7661d, and inflicted further injury. What better proof of imminent future injury could there be than that injury actually coming to pass a mere 22 days later?

More generally, as explained above, the State faces new and ongoing injury *every* time it issues a permit and is required to comply with Defendants' fluid, ever-increasing disparate impact mandates. *Supra* §I.A.4. Given the highly repetitive nature of such actions, the State will realistically never be free from imminent harms for as long as Defendants' regulations remain on the books, since the need to decide whether to grant or deny particular permits or grants will always be pressing. *Id.*

8. The State's Harms Are Traceable To Defendants' Regulations And Actions

EPA offers a strange suggestion (at 18) that the State's harms are not traceable to its disparate-impact regulations "because EPA could have initiated those very proceedings upon complaints alleging only intentional discrimination." That is mistaken for two reasons.

First, no matter what EPA "could" theoretically have done (Opp.18), that is *not* what it did. *See* Seidemann Decl. ¶109. That is akin to arguing that parties may not challenge illegal agency actions where the agency *could* have acted lawfully. Has such a "but we could have acted legally (but didn't)" defense *ever* worked? The single case cited by EPA (at 18) certainly did not hold as much.

Here EPA's actions were either overwhelmingly or exclusively driven by disparate-impact theories, rather than intentional discrimination. EPA's letter of concern, document demands, and the mandates it sought to impose during the informal negotiations all make that clear. *See* Exh. 11 at 3-5; Exh. 18; Exh. 81-83. At no point did EPA offer any credible or serious allegation that the State's actions were motivated by intentional discrimination. *See* Seidemann Decl. ¶109. EPA's eleventh-hour contention that intentional discrimination was a significant component of its investigation is a revisionist retelling. And it is tellingly offered without any supporting declaration.

Second, even if *some* of the State's harms were theoretically traceable to Title VI's intentional-discrimination prohibition, the State would still have standing. That is because at least *some* harms at issue would still be attributable to the disparate-impact regulations, such as conducting the relevant statistical analysis, *supra* at 11-13), or addressing EPA's *specific and explicit disparate-impact-based objections*. *See* Exh. 11, 42. Because even "a dollar or two" of injury suffices to establish standing, tracing *any* of the State's injuries to the challenged mandates is sufficient. *Sprint Communications*, 554 U.S. at 289.

9. Redressability

Not content to let any single standing element go unargued, EPA finally contends (at 13) that Article III redressability is lacking for the State's non-delegation claims because this Court putatively lacks authority to "issue meaningful relief." Not so. Vacatur of EPA's self-imposed 180-day deadline or an injunction against EPA forbidding it from following any directions from the Private Special Interest Groups (and thereby requiring it to exercise its own independent and untainted judgment) would fully remedy the State's non-delegation-doctrine injuries.

EPA further protests (at 13) that "this Court cannot compel Defendants [to] violate the judgment in [the *CARE*] case." But it offers no citation for that proposition, which is wrong. EPA can, in theory, comply with the *CARE* judgment by completing its reviews within 180 days, consistent with EPA's self-imposed regulatory deadline. EPA just can't do that in practice. So EPA can comply

with its regulation, or its concededly arbitrary regulation can be set aside. What EPA can't do is use the *CARE* judgment as a vehicle to give power to private actors. The delegation of governmental power to private actors violates the non-delegation doctrine, no matter which branch does the delegating or blesses it. *National Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 880 (5th Cir. 2022); *see also Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998).¹⁰

B. The State's Claims Are Not Moot

EPA also contends (at 24-26) that its post-suit abandonment of the Title VI complaints moots this action. Not so. This case is not moot under ordinary mootness standards and, even if it were, this case readily falls within the voluntary cessation exception because EPA's actions are transparent "litigation posturing" to avoid judicial review." *Yarks*, 905 F.3d at 910. In addition, the State's non-delegation claim satisfies the "capable of repetition, yet evading review" exception to mootness.

1. Defendants' Actions And Regulations Are Inflicting Ongoing Injury

"The burden of demonstrating mootness 'is a heavy one.'" *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979). "A case becomes moot only *when it is impossible for a court to grant any effectual relief whatever to the prevailing party*." *Knox v. SEIU*, 567 U.S. 298, 307 (2012) (cleaned up) (emphasis added). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* at 307-08 (cleaned up). Defendants cannot satisfy this "heavy burden" of demonstrating ordinary mootness here even taking their post-suit surrenders at face value.

Even with EPA's abrupt capitulations, the State continues to face injuries from Defendants' disparate-impact and cumulative-impact mandates. As explained above, the injuries inflicted by these

¹⁰ In addition, EPA's citation-less argument creates yet another constitutional violation, this time of the Due Process Clause. EPA cannot rely on a judgment to which the State was not a party to bind the State and violate its constitutional rights: "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.7 (1979).

EPA's argument thus amounts to contending that it can violate the State's rights under non-delegation doctrine with impunity simply because it *acquiesced* in other adverse judgments to which the State was not a party. That brazen suggestion not only merits decisive rejection, but also serves to confirm just how lawless the agency's ambitions have become: EPA cannot surrender its way to powers that exceed the Constitution. And its attempt to wield *offensively* adverse judgments to which it *acquiesced* is illustrative of the depths of the shenanigans the agency is pulling.

mandates incur essentially *every* time that the State considers whether to grant a permit, make a funding grant, or take any other relevant action governed by Title VI. *Supra* §I.A.4. Defendants’ regulations and rules are still on the books and they continue to bind the State in *all* relevant decisions here. *Id.* Accordingly, this is *not* a case in which subsequent “events have completely and irrevocably eradicated the effects of the alleged violation.” *Davis*, 440 U.S. at 631. Instead, Defendants’ abandonment of two investigations has only provided relief for *part* of the State’s harms, while leaving the rest in place for *all* future permitting/funding decisions.

The State will *continue* to incur compliance costs for as long as the challenged mandates remain in existence, and the State will *remain* an object of the regulations. It is therefore not “impossible for [this] [C]ourt to grant any effectual relief.” *Knox*, 567 U.S. at 307. Instead, granting the State’s requested relief will instantly and completely lessen the State’s regulatory burdens in *all* relevant permitting/funding decisions, and also remedy the State’s sovereign/Spending Clause injury.

The ongoing nature of the State’s injuries is further shown by EPA’s June 16 Objection: demanding once again that the State comply with disparate-impact and cumulative-impacts-based mandates, and thereby inflicting fresh (and uncapitulated) injury. *Supra* at 12. And because that objection was not swept up in EPA’s surrender-its-way-to-mootness ploy, it alone defeats mootness.

Similarly, a credible threat of enforcement still exists. EPA tellingly did not take *even a month* after this suit was filed to make its June 16 Objection, which carried the force of law. And the threat of enforcement against the State remains credible, particularly given EPA’s current (and curious) enforcement priorities. *Supra* §I.A.5. Indeed, given EPA’s willingness to institute enforcement proceedings for permits that produced *disparate environmental benefits*, it is hardly “impossible” that EPA would seek to enforce its mandates against the State again.¹¹

¹¹ For similar reasons, the State’s non-delegation claims are not moot because there is a reasonable prospect of recurrence. The Private Special Interest Groups file numerous Title VI complaints with EPA. Sierra Club, for example, filed one just seven days after this suit (though its bad timing got it swept up in EPA’s mootness machinations). Exh. 59. It filed another disparate-impact complaint on August 25 against the Florida Forest Service, which explicitly cited Sierra

2. Defendants' Actions To Moot This Case Fall Within The Voluntary-Cessation Exception

Even if the State's claims were otherwise moot under the ordinary mootness standards, EPA's actions here readily fall within the voluntary cessation exception to mootness.

"It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant ... free to return to his old ways." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up) (citations omitted). Even where the voluntary cessation is by governments, "Voluntary cessation ... moots a case ... only if it is '*absolutely* clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (quoting *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)) (rejecting government defendant's mootness argument).

For voluntary cessation to establish mootness, federal courts "'must be certain that a defendant's voluntary acts are not mere 'litigation posturing'—and that 'the controversy is actually extinguished.'" *Tucker v. Gaddis*, 40 F.4th 289, 295 (5th Cir. 2022) (Ho., J., concurring) (quoting *Yark*, 905 F.3d at 910). Here EPA's actions flunk both requirements: (1) its actions are obvious "litigation posturing" and (2) even after EPA's voluntary abdications, the dispute here is *far* from "actually extinguished." *Id.* In addition, *all* of the *Fenves* factors that the Fifth Circuit have identified for overcoming the presumption of good faith are present here.

a. *Litigation Posturing*

EPA's putatively mooting conduct—its abrupt, post-suit abandonment of its Title VI investigations and rejection of new complaints—is plainly "litigation posturing" for six reasons.

Club's privileged right to resolution within 180 days under the *CARE* judgement. Exh. 60 at 44. By EPA's own admissions, its 180-day deadline for concluding investigations is rarely met as that deadline is "impracticable," "arbitrary," and "unrealistic." P.I. at 20. So it is hardly impossible that any new investigation against the State would drag on, thus requiring the consent of the Private Special Interest Groups and triggering a new private non-delegation doctrine violations.

First, the timing of EPA’s surrenders fairly cries out as litigation posturing. EPA did so only *after* this suit was filed and the State sought a preliminary injunction on June 21, seeking a decision by July 11. EPA did so quite quickly: a mere *six days* later and using that closure as basis to avoid answering the State’s preliminary injunction on an expedited basis *the very same day*. *See* Doc. 18. That timing militates against mootness. *See, e.g., Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir. 2020) (holding that “the suspicious timing of the change” weighed against mootness).

Second, the stage of the informal negotiations makes plain EPA’s litigation-based motivation. At no point pre-suit had EPA ever previously hinted that it might walk away without obtaining a scintilla of relief. Exh. 18. EPA had even revealed that—contrary to its own regulations, 40 C.F.R. §7.120(d)—it was proceeding on “parallel tracks” and drafting findings of violations to exert maximum pressure. *See* Seidemann Decl. ¶73; Exh. 18.

Notably, EPA had traded multiple drafts of resolution agreements with tracked changes and the parties were not far apart. Exh. 81-83. EPA could thus have readily achieved substantial benefits simply by agreeing to the terms of LDH’s and LDEQ’s last redlines. *Id.* At that point, the parties were, in the words of one of the Title VI complainants with which EPA was sharing then-non-public drafts, “pretty close to an agreement.” Exh. 65. Reporting based on subsequent FOIA requests for the draft agreements further explained that the agreements would have “*ingrained sweeping new procedures* to ensure that future permitting decisions included an in-depth analysis into ... the adverse [disparate] impacts” and represented a “*major win*” for EPA. Exh. 68 at 3 (emphasis added). Environmental groups have also been clear that those agreements would have provided substantial gains. Had EPA accepted those offers the agency would have, in those groups’ view:

- Achieved “meaningful reform.” (Deep South Center for Environmental Justice Director of Law and Policy Monique Harden). Exh. 62 at 4.
- Attained a “tremendous step forward.” (Harden.) *Id.*

- “[G]iven LDEQ all of the tools that it could need to do a better job than what it has done.”

(Lisa Jordan, Head of Tulane Environmental Law Clinic. *Id.*).

But rather than accept the “major win” and “meaningful reform” that was readily in its grasp, EPA instead insisted on walking away with *absolutely nothing except its current mootness argument*. EPA’s willingness to abandon *all* of the many policy achievements manifestly on the bargaining table—for no apparent purpose *except* gaining a mootness argument—underscores the transparent litigation gamesmanship of its actions. As the leader of the complainant Tulane Environmental Law Clinic explained, “I don’t know that I’ve ever seen somebody instantly give up [like this] ... and I’ve been litigating for 30 years.” Exh. 65 at 2.

Moreover, EPA’s stated reason for closing the investigations—inability to resolve the investigations by July 11—is obvious pretext. Agreements were in hand *if EPA wanted them*. Moreover, the investigation had already dragged on for more than a year. There was nothing magical or remarkable about the July 11 deadline—save from its potential effect on justiciability here. And there is every reason to believe that EPA could have tolerated another extension, particularly given its lethargic pace in issuing its letter of concern and initiating informal negotiations. It also is doubtful that Sierra Club would have objected to an extension given the potential policy victory at hand—for anyone preferring policy success over a legal mootness argument at least. But after the State sought a preliminary injunction, EPA’s slow train to somewhere suddenly became a bullet train to nowhere.¹²

Third, EPA’s squirrely conduct after this suit was filed underscores the irregularity of its actions. Before the State’s Complaint, the parties had met by teleconference twice every week like clockwork, with rare exceptions like holidays. *See* Seidemann Decl. ¶¶78-79; Burdette Decl. ¶16; Exh.

¹² The strategic nature of EPA’s machinations is further demonstrated by its parallel conduct in Michigan. There, EPA had (as here) been insisting that Michigan comply with sweeping disparate-impact and cumulative-impacts mandates—and appeared to be on the cusp of a landmark agreement to that effect. Exh. 66 at 1-3. But after the State’s suit and motion, EPA executed yet another 180-degree turn that similarly astounded environmental justice advocates, including a former EPA official who called it a “travesty” and “grotesque.” *Id.* at 1, 3. And the groups specifically connected that retreat in Michigan to the same strategy in which “EPA dropped high-profile civil rights investigations in Louisiana.” *Id.* at 2.

17. But after this suit was filed, EPA began cancelling all teleconferences, but only at the last minute—thereby gratuitously and high-handedly wasting the time of State officials. P.I. at 11-12. EPA’s conduct—which abruptly turned on a dime—is only explainable as a response to this litigation.

Fourth, EPA’s *enormous* reliance (at 11-26) on its investigation capitulations for its standing and mootness arguments further supports finding that those actions were motivated by this litigation.

Fifth, the State’s view that EPA’s actions were mere litigation ploys is widely shared: indeed, it is now the broad consensus of commentators and interested parties. For example, Lisa Jordan of the Tulane Environmental Law clinic opined that “EPA’s and DOJ’s *entire rationale*, we think, for having dismissed this complaint is *to poise itself well to succeed in this litigation*.” Exh. 62 at 6 (emphasis added). Similarly, an environmental attorney at Beverage & Diamond explained that he “‘anticipate[d] that EPA took this action to mitigate the risk’ of a bad court ruling.” Exh. 70 at 2. *No one*—save Defendants—appears to have the slightest difficulty connecting the dots here.

Sixth, EPA’s refusal to provide any declaration attesting under oath that its actions were not litigation-motivated gravely undermines its contention here. Rather than swearing to that fact and providing *actual evidence* of its intent, it instead points (at 26) *only* to its unsworn, self-serving, and post-suit statement, which was offered in the shadow of the State’s preliminary injunction motion. As the Supreme Court has explained, “The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.... Silence then becomes evidence of the most convincing character.” *Interstate Circuit v. United States*, 306 U.S. 208, 226 (1939). So it is here: EPA’s telling refusal to provide any sworn evidence that its action were not litigation posturing provides “evidence of the most convincing character” that they were just that. *Id.*

b. Not “Absolutely Clear” That The Conduct Will Not Recur

This dispute is not actually extinguished, and thus not moot, because EPA cannot meet its “heavy burden” or demonstrating that it is “‘*absolutely* clear that the allegedly wrongful behavior could

not reasonably be expected to recur.” *Adarand Constructors*, 528 U.S. at 222 (applying standard to governmental entity and holding case not moot). EPA does not even acknowledge that “absolutely clear” standard (at 24-26), let alone attempt to satisfy it.

This case is controlled by *Northeastern Florida Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656 (1993). In rejecting a governmental entity’s voluntary cessation argument, the Court explained: “This is an *a fortiori* case. There is no mere risk that Jacksonville will repeat its allegedly wrongful conduct; it has already done so.” *Id.* at 662. The same is true here. Not only is there a risk that EPA will again attempt to enforce its disparate-impact and cumulative-impacts mandates against the State, “it has already done so.” *Id.* Specifically, EPA’s June 16 Objection did just that and has *not* been withdrawn by the agency. *Supra* at 12.

EPA’s June 16 Objection also demonstrates the patent error in EPA’s central premise (at 26) that the State “could at best identify no more than the ‘mere ability to reimpose’ new proceedings.” Instead of “mere ability” to recur, the State has conclusive *evidence of actual recurrence*. EPA ignores its June 16 Objection—of which it could not have been unaware, since the action was *its own*. EPA owed this Court more candor.¹³

Because it is not “‘absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur,’” this case is not moot. *Adarand Constructors*, 528 U.S. at 222 (citation omitted).

c. Fenves Factors

Finally, this case readily falls within the voluntary cessation exception under the three factors

¹³ *West Virginia v. EPA* strongly supports the State here as well. There, the Court that the case was not moot because EPA “‘nowhere suggests that if this litigation is resolved in its favor it will not’ reimpose emissions limits ...; indeed, it ‘vigorously defends’ [its ability to do so].” 142 S.Ct. 2587, 2607 (2022) (citation omitted). Here too EPA *never* commits not to enforcing its challenged mandates or avoiding future non-delegation violations if it were to prevail here. And it further “vigorously defends” the legality of its actions in this Court. *Id.*

Similarly, the Fifth Circuit concluded the voluntary cessation exception did not apply where “the government has not even bothered to give [the plaintiff] any assurance that it will permanently cease engaging in the very conduct that he challenges.” *Tucker v. Gaddis*, 40 F.4th 289, 293 (5th Cir. 2022). So too here: EPA does not offer *any* assurance that it will not enforce its challenged mandates against the State in the future, and offers only vague contentions that it is unlikely to do so—which simply ignore its actual actions, such as the June 16 Objection.

that the Fifth Circuit has established. In “*Fenves*, [the Fifth Circuit] explained three factors that can overcome the presumption [of good faith]. They are: (1) the absence of a controlling statement of future intention not to repeat the challenged policy; (2) the suspicious timing of the change; and (3) the governmental entity’s continued defense of the challenged policy after the supposedly mooted event. If all three factors obtain, the case isn’t moot.” *Texas v. Biden*, 20 F.4th 928, 962 (5th Cir. 2021) *rev’d on other grounds* 142 S.Ct. 2528 (2022) (cleaned up) (citations omitted). That is just so here.

First, EPA has offered nothing remotely approaching a “a controlling statement of future intention not to repeat the challenged policy.” Nor would any such statement be credible in light of EPA’s still-pending/non-abandoned June 16 Objection. *See* Exh. 84.

Second, the timing of EPA’s post-suit *volte face* is obviously suspicious, particularly given the other indicia of irregularity, as set forth above (at 23).

Third, EPA’s brief undeniably offers a “continued defense of the challenged policy after the supposedly mooted event.” *Texas*, 20 F.4th at 962.

Because all three *Fenves* factors are satisfied here, “th[is] case isn’t moot.” *Id.*

3. The Non-Delegation Claims Are Capable of Reptation Yet Evading Review

The State’s non-delegation claims also “fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review.” *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462 (2007). That “exception applies where ‘(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.’” *Id.* (citation omitted).

Both requirements are satisfied here. Title VI investigations are inherently shorter than the time necessary to fully litigate a case to judgment and through appeal. Although they often last longer than 180 days, there is no indication that they routinely take more than two years—which the Supreme Court has held is insufficient time to fully litigate a case to judgment and through appeal. *Id.*

Similarly, as explained above, there is “a reasonable expectation that the State ‘will again be subjected to the alleged illegality,’” *Id.* at 463. That is particularly true as Sierra Club regularly files Title VI complaints and EPA routinely takes more than 180 days to resolve them. *Supra* at 21-22 n.11.

4. Jurisdictional Discovery Is Warranted If This Court Believes There Are Genuine Issues Of Material Fact

As shown above, the record plainly establishes that this case is not moot. But, at a bare minimum, these factual propositions are at least fairly debatable. This Court should order jurisdictional discovery if it believes there are material issues of fact on mootness. *See, e.g., Freeman v. United States*, 556 F.3d 326, 342 (5th Cir. 2009). Similarly, if this Court entertains any genuine doubts as to the State’s standing, jurisdictional discovery is appropriate—particularly as EPA itself appears to harbor no doubts that conducting disparate-impact analysis is *not* costless and the State should be permitted to explore EPA’s evidence/understanding. *Supra* at 13.

C. The State Has Viable Non-APA Causes Of Action

The State has asserted three types of non-APA claims here: (1) claims arising from the Constitution, (2) claims at equity, and (3) non-statutory claims challenging *ultra vires* actions. *See* Complaint ¶¶ 98, 204-10, 218-253. Contrary to EPA’s arguments (at 35), all of them are available here.

1. The State’s Constitutional And Equitable Causes Of Action Are Distinct From Its *Ultra Vires* Claim And Not Subject To *Kyne* Limitations

EPA attempts (at 35) to lump all of the State’s claims together under the umbrella of “*ultra vires* review under *Leedom v. Kyne*, 358 U.S. 184 (1958), which it contends are subject to extremely rigorous limitations that make them akin to a “Hail Mary pass.” But the State’s equitable and constitutional causes of action neither derive from *Kyne* nor are *ultra vires* claims. They are thus *not* subject to the same limitations.

Equitable Cause of Action. The Supreme Court notably considered the cause of action at equity in *Free Enterprise Fund* and cited several cases recognizing the availability of that type of claim. 561 U.S. at 491 n.2 (collecting cases). In *not one* of those cases did the Court treat those claims as being

Kyne-based or “*ultra vires*” causes of action, and indeed the words “*ultra vires*” do not appear in *any* of them. *See generally id.*; *Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001); *Bell v. Hood*, 327 U.S. 678 (1946); *Ex parte Young*, 209 U.S. 123 (1908). Instead, in each case the Court treated the claims as ones permitting direct review of the legality of the challenged acts without any need to satisfy the *Kyne* or *Kyne*-like obstacles that EPA tries to conjure here. *Id.*

Notably, the State’s equitable cause of action that is the same one that federal courts apply in when considering claims under the doctrine of *Ex Parte Young*. *See Free Enterprise Fund*, 561 U.S. at 491 n.2. But federal courts do not impose the limitations of *Kyne* for such suits when the question is whether state officials are complying with federal law. *See, e.g., Air Evac EMS, Inc. v. Texas, Dep’t of Ins., Div. of Workers’ Comp.*, 851 F.3d 507, 515 (5th Cir. 2017). The same result should obtain when the shoe is on the other foot, and the claim at equity is that *federal* officials are violating federal law.

Constitutional Cause of Action. The Fifth Circuit has similarly entertained a cause of action arising under the Constitution in *Cochran*, without imposing any similar limitations. *See Cochran v. SEC*, 20 F.4th 194, 199-200 (5th Cir. 2021) (en banc), which the Supreme Court affirmed in *Axon*.

2. The State’s Non-Statutory *Ultra Vires* Claim Easily Passes Muster Under Fifth Circuit Precedent

EPA’s arguments regarding the State’s non-statutory *ultra vires* claims also wrongly conflate distinct claim types in a misguided attempt to augment the State’s burden. As the Fifth Circuit has recently explained, *ultra vires* claims come in many flavors. *Apter v. HHS* __ F.4th __, 2023 WL 5664191, at *4 (5th Cir. Sept. 1, 2023) (discussing three potential “paths”). Here, as in *Apter*, the State seeks to “use[] the APA to assert a ‘non-statutory cause of action’—such as an *ultra vires* claim.” *Id.* at *6 (5th Cir. Sept. 1, 2023). When a party does so, they must satisfy two requirements: the plaintiff must (1) “identify some agency action affecting [it] in a specific way” and (2) “show that he has been adversely affected or aggrieved by that action.” *Id.* (cleaned up). “The action need not be final” and there is *absolutely no* mention of satisfying the *Kyne* standard or any miracle-adjacent hurdles. *Id.*

Both procedural requirements are satisfied here. The agency-action requirement is governed by the APA's definition of "rule," which is defined "broadly enough to include virtually every statement an agency may make," including "non-binding agency policy statements and guidance documents interpreting existing rules." *Id.* (citations and semi-colon omitted); *see also Batterton v. Marshall*, 648 F.2d 694, 700 (D.C. Cir. 1980) ("The breadth of this definition [of 'rule'] cannot be gainsaid."). Here there is "agency action" in the form of EPA's demands that the State comply with disparate-impact and cumulative-impact mandates, as reflected in *inter alia*: (1) Defendants' disparate-impact regulations, (2) EPA's letter of concern, (3) EPA's June 16 Objection, and (4) EPA's cumulative-impacts guidance documents. Similarly, EPA's March 2023 decision to allow Sierra Club to make the decision about whether to extend informal proceedings was agency action. And the aggrievement requirements is satisfied here for the reasons explained herein and previously regarding standing and irreparable injury. *See supra* §I.A; P.I. at 12-15. Nor does EPA raise any zone-of-interest defense here (which would fail in any event).

Apter also makes plain that the State satisfies the substantive requirements for the non-statutory *ultra vires* claim that it asserts. In *Apter*, it was sufficient that plaintiffs asserted that FDA lacked authority to "recommend treatments or give other medical advice." 2023 WL 5664191, at *5. And even though FDA possessed authority to "make public statements"—which might involve some line-drawing exercises between "statements" and "advice"—the plaintiffs had stated a valid non-statutory *ultra vires* claim because it was sufficient to argue "FDA d[id] not have express authority to recommend against off-label uses of drugs approved for human use." *Id.* at *5-6.

The State has valid claims under *Apter* here *a fortiori* as its claims are even more clearly categorical and require even less line drawing. Specifically, the State argues that (1) EPA was wholly without power to delegate governmental authority to Private Special Interest Groups, (2) Defendants are entirely without authority to impose disparate-impact mandates, both generally and specifically as

to the States under the Spending Clause, and (3) Defendants are entirely without power to enforce substantive mandates under Title VI without obtaining Presidential ratification and complying the APA rulemaking requirements. *Apter* thus compels rejection of Defendants’ *ultra vires* arguments.¹⁴

D. The State’s APA Claims Challenge Final Agency Action

While the States’ APA claims do require final agency, that requirement is satisfied here too.

“[T]wo conditions must be satisfied for agency action to be ‘final’: First, the action must mark the ‘consummation’ of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (cleaned up). The Supreme Court has “long taken a pragmatic approach to finality, viewing the APA’s finality requirement as flexible.” *Texas v. EEOC*, 933 F.3d 433, 441 (5th Cir. 2019) (cleaned up) (citations omitted). Here, final agency action exists for all the State’s APA claims.

1. Non-Delegation Claims

EPA’s delegations of governmental power to Private Special Interest Groups are final agency actions, which occurred at both a macro- and micro-level. On a big-picture level, EPA’s decision to accede to the private groups’ demands and permit their proposed judgments to be entered against it satisfies both *Bennett* requirements. The decision was not “tentative or interlocutory” in any way. *Bennett*, 520 U.S. at 177-78 (cleaned up). And “rights” were “determined” and “legal consequences ... flow[ed],” as EPA conveyed new rights on the Private Special Interest Groups—and no one else—to dictate how EPA’s investigatory powers would be exercised.

On a more granular level, EPA engaged in final agency action here in March 2023, when EPA decided not to exercise its own judgment about whether to continue informal negotiations, but instead

¹⁴ In contrast, the *Kyne* exception applies where a party is attempting to overcome a statutory provision that “*expressly precluding* such review.” *Exxon Chemicals Am. v. Chao*, 298 F.3d 464, 468 (5th Cir. 2002) (emphasis added). No such provision exists here, as Defendants are at most arguing *implicit* preclusion, and without merit.

submit the matter to Sierra Club as to how EPA would proceed. *See* Seidemann Decl. ¶¶65-70.

There was nothing “tentative or interlocutory” about EPA’s decision, and EPA has never suggested that it was anything other than completely bound by Sierra Club’s decision, whatever it might be. When EPA submitted the matter to Sierra Club for their approval, “rights” were “determined” and “legal consequences ... flow[ed]”—specifically Sierra Club was given the right to control EPA’s actions and veto continued informal negotiations if it desired.

2. Disparate-Impact Claims

The State’s disparate-impact claims also challenge final agency action. Defendants do not appear to dispute that their issuance of their disparate-impact regulations, 40 C.F.R. §§7.35(b), (c) and 28 C.F.R. §42.104(b)(2), were final agency action. Nor could they. And while they contest timeliness of the State’s challenges, those arguments fail for the reasons below.

Similarly, *every* grant of funds that binds the State to Title VI and its implementing regulations is a new final agency action. The APA specifically defines “grant of money” as a form of “relief,” and thus “agency action.” 5 U.S.C. §551(11), (13). And grants are final agency action once executed: money changes hands and, much like a contract, neither side can breach freely. In addition, legal consequences flow in the form of the binding effect of those Title VI conditions on the grant recipients.

For that reason, courts generally recognize that granting funds is final action: the requisite finality exists when the agency “completes its review of the grant application and decides to disburse the appropriated funds.” *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1104 (9th Cir. 2007). To be sure, many courts have found final action *even earlier* without any actual grants of funds. For example, “courts routinely hold that agency action is final where it affects grant eligibility criteria.” *Planned Parenthood of New York City, Inc. v. HHS*, 337 F. Supp. 3d 308, 329 (S.D.N.Y. 2018) (collecting cases). But Defendants do not cite *any* authority holding that an actual grant of federal funds is not final action.

Instead, Defendants contend (at 30-31) that grants are not final agency action because the

obligations they impose are not “new.” But Defendants misapprehend both the case law and the nature of the grants here.

By their very nature, Title VI obligations only last for as long as the “program or activity [is] receiving Federal financial assistance”—*present tense*. 42 U.S.C.A. §2000d (emphasis added). A grant recipient is thus bound to Title VI obligations only for the duration of the grant. Both EPA’s and DOJ’s regulations are clear on this point.¹⁵ As are “courts[, which] have consistently held that the funds must be received during the relevant time period” for Title VI to apply. *Johnson v. Bd. of Educ. of Prince George’s Cnty.*, No. CIV. PJM 11-1195, 2014 WL 3778603, at *1 (D. Md. July 29, 2014).

Because Title VI obligates recipients only for the term of the grants, new grants create new obligations by extending the time in which the recipient is bound to Title VI mandates—and are thus final agency actions. That is why, for example, permit renewals are challengeable as final agency action even though there are no “new” obligations beyond the extension of obligations. *See, e.g., Animal Legal Def. Fund v. USDA*, 789 F.3d 1206, 1215 (11th Cir. 2015) (holding that “renewal of [company’s] license [wa]s a final agency action subject to judicial review”). But by Defendants’ logic, renewals of contracts, permits, licenses, etc. would not constitute final agency action unless they imposed new obligations beyond additional duration. They cite nothing for that proposition.

EPA’s reliance (at 30-31) on *State v. Rettig*, 987 F.3d 518 (5th Cir. 2021) and *National Pork Producers Council v. EPA*, 635 F.3d 738 (5th Cir. 2011) is thus misplaced. In *Rettig*, HHS had taken actions that merely “restated” the existing obligations, without extending them further into the future. 987 F.3d at 529-30. Similarly, in *National Pork Producers* the guidance at issue “merely restate[d] [a statutory] prohibition against discharging pollutants without an NPDES permit,” and thus “d[id] not change any rights or obligations and only reiterate what ha[d] been well-established.” 635 F.3d at 756.

¹⁵ See 28 C.F.R. §42.105 (grants “shall obligate the recipient for the *period during which Federal financial assistance is extended*” (emphasis added)) (DOJ); 40 C.F.R. §7.80 (financial grants “obligate the recipient for as long as EPA assistance is extended”).

Thus, while mere restatement of existing obligations is not final agency action, extension of existing obligations further into the future is precisely the sort of action that by “which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett*, 520 U.S. at 177-78. Moreover, as explained below, even if EPA’s premise were correct, the State’s action would still be timely because EPA has changed the substantive character of the Title VI obligations within the last six years—separately creating “new” obligations. *Infra* at 36-37.

EPA also committed further final agency action in its June 16 Objection. That alone demanded compliance with its disparate-impact and cumulative-impacts mandates. *Supra* at 12.

3. Cumulative Impacts Claims.

EPA’s promulgation of regulations masquerading as mere guidance—which, in reality, effectively mandate consideration of cumulative disparate impacts—are also final agency actions, since they are binding as a practical matter. EPA’s promulgation of the 2022 FAQ and 2023 Cumulative Impacts Addendum are not in any way tentative or interlocutory. And for the second *Bennett* requirement, “What matters is whether the document ‘has *practical binding effect*’ such that ‘affected private parties are *reasonably led to believe* that failure to conform will bring adverse consequences.’” *Texas v. EEOC*, 933 F.3d at 442 (cleaned up) (citation omitted) (emphasis added). An action is binding “‘if it either appears on its face to be binding or *is applied by the agency in a way that indicates it is binding.*’” *Id.* at 442 (cleaned up) (citation omitted) (emphasis added). Here, EPA’s actions belie any contention that its actions are not binding under the pragmatic and practical final-agency-action inquiry.

EPA argument (at 34) that the State cannot challenge its regulations because they contain boilerplate disclaimers that they do not “create, expand, or limit any legal rights [etc.]” is thus unavailing. Those lawyerly disclaimers are irrelevant as it “is the effect of the action and not its label that must be considered.” *Oregon Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 985 (9th Cir. 2006). Here, EPA’s actions belie its contention that its cumulative-impacts guidance is not binding.

Despite their *pro forma* disclaimers, EPA’s “guidance” *on its face* contains statements that make plain its binding nature. The 2022 FAQ, for example, declares unequivocally that “[i]n the context of Title VI investigations, *EPA considers cumulative impacts when evaluating whether there is an adverse impact from the recipient’s policy or practice.*” Exh. 46 at 13 (emphasis added). Similarly, EPA’s 2023 Cumulative Impacts Addendum declares definitively that Title VI “*grants EPA the authority to consider cumulative impacts*” and further that “Addressing cumulative impacts is ... *integral to protecting civil rights.*” Exh. 47 at 3-4 (emphasis added). Nor is any disinterested observer confused about the binding effect of this guidance: as Brian Israel, who was deputized to defend EPA’s actions, forthrightly explained: “is very clear, to get a permit from this EPA *or a state that is being guided or monitored by EPA, you have to consider cumulative impacts.*” Exh. 64 at 3 (emphasis added).

In addition, EPA’s actions confirm that it actually regards its guidance as binding. EPA remarkably glosses over the fact that it submitted proposed settlement agreements that would have imposed cumulative-impact requirements that precisely match its regulations, *see* Seidemann Decl. ¶¶44-48, Burdette Decl. ¶11, Exh. 82; and also demanded cumulative-impacts analysis in its letter of concern, Exh. 11 at 5-6, 22—facts that it does not deny. Thus, while negotiating positions may not be independently challengeable actions, they certainly can serve as evidence about whether EPA’s guidance is binding as a practical matter. In any event, EPA’s post-suit demand in its June 16 Objection that the State conduct cumulative-impacts analysis eliminates any doubt as to whether EPA is treating its “guidance” as legally binding mandates. *Supra* at 12. And even in this Court, EPA tellingly will not disclaim its prior position that States must consider cumulative disparate impacts, further betraying that its “guidance” is in reality binding.

E. The State’s Claims Are Timely

EPA also contests (at 29-34) the timeliness of the State’s claims, at least insofar as they are raised under the APA. Its arguments are unavailing for four reasons.

First, the State’s non-APA claims are timely because they require only “agency action” which need not be final. P.I. at 13; Complaint ¶¶100-03. Defendants do not dispute they have made funding grants triggering Title VI obligations within the last six years, which APA unequivocally defines to be “agency action.” *Supra* at 32. The State therefore may challenge the lawfulness of the strings attached to those grants made within the last six years. For similar reasons, the State’s non-APA non-delegation claim is timely, as they challenge acts that were all taken within the last six years.

Ironically, EPA’s own case, *National Pork Producers* (cited at 31) makes this clear: although it dismissed the plaintiffs’ *APA claims* as untimely because of a lack of *final* agency action within the prior six years, it reached the merits of the non-delegation and Spending Clause claims because they do not require final agency action. 987 F.3d at 529-34. Nor does EPA even appear to offer any timeliness argument for the State’s non-APA claims. *See Opp.* at 29-35.

Second, EPA does not dispute (at 29-35) that a credible threat of future enforcement would make the State’s claims timely. As explained above, just such a threat existed when this suit was filed—which both (1) continues to exist today and (2) is not mooted due to EPA’s voluntary cessation in any event. *Supra* at 14-17, 22-27. The State’s APA claims are thus timely on that basis alone.

Third, even if EPA’s arguments (at 30-31) that funding grants did not create “new” obligations—even where they extend the duration of Title VI obligations—were correct generally, EPA’s is wrong that there are no new obligations created within the last six years. Instead, EPA’s recent and *radical* shift to hyper-aggressive enforcement and creation of novel cumulative-impacts mandates represents a fundamental change in the character of EPA’s Title VI obligations.

As recently as July 2015, EPA’s enforcement of Title VI was so thoroughly moribund as to approach *complete non-existence*. For example, following journalists’ inquiries, EPA was sheepishly forced to admit that it “didn’t check this complaint inbox for civil-rights concerns from June 2014 to July 2015,” during which there were “149 messages,” including “29 e-mails [that] raised discrimination-

related concerns”—all of which went completely ignored during that time, with EPA still “crafting its responses in April 2016.” Exh. 72 at 2-3. As a practical matter, the creation of *any obligation at all* under EPA’s disparate-impact regulations represents a “new” obligation as compared to that year-plus thump-twiddling period of EPA enforcement.

In stark contrast, the current Administration has made no secret of its intent to change fundamentally the character, frequency, and intensity of Title VI enforcement by EPA. *See, e.g.*, Exh. 4-9; Exh. 41; Exh. 52 at 390-94; Exh. 53 at 53, 241. That is reflected in its self-congratulatory announcements, its creation of a new division, the OEJECR, giving it with equal status as the Air and Water Divisions, and its pre-suit enforcement here despite a conceded *disparate environmental benefit*. *Supra* at 15-16. Similarly, EPA points to nothing like its EPA’s binding-as-a-practical-matter cumulative-impact mandates prior to President Biden’s inauguration. More generally, Defendants’ enforcement priorities are now so radically altered that they coerced Alabama into *not* enforcing its criminal laws against illegal sewage discharges in a majority-minority county, thereby affirmatively subjecting those residents to disparate environmental impacts. *Supra* at 16 n.8. All these actions amount to “substantive change[s] that restart[] the statute of limitations clock.” *Mendoza v. Perez*, 754 F.3d 1002, 1018-19 (D.C. Cir. 2014).

Fourth, DOJ’s disparate-impact regulations can be timely challenged under the reopening doctrine, which explicitly permits “a plaintiff to challenge an agency action past the ordinary timeline” when an agency has reopened an issue. *Alliance for Hippocratic Med. v. FDA*, 78 F.4th 210, 242 (5th Cir. 2023). The central inquiry under the reopening doctrine is whether the agency has “undert[aken] a ‘serious, substantive reconsideration’” of its policy. *Id.* at 243 (citation omitted). Merely taking public comments on the possible repeal and responding to them is generally sufficient reconsideration to trigger a reopening. *See, e.g., Ohio v. EPA*, 838 F.2d 1325, 1328-29 (D.C. Cir. 1988). But here DOJ ventured *far* further down the road to repeal than that—*well beyond* mere potential reconsideration to

adopting a formal repeal that was final for DOJ purposes, which was subsequently pulled from OMB review. AR279. The reopening doctrine is thus triggered here *a fortiori*.

Defendants’ contention (at 31-32) that “withdrawal of a draft rule does not constitute a final agency action for purposes of the APA” is inapt. The final agency action is DOJ’s initial promulgation of its disparate-impact mandates, and the State’s challenge to that action is timely under the reopening doctrine. And although the State *specifically* raised the reopening doctrine (P.I. at 14; Complaint ¶¶ 233-240), Defendants offer no response—thereby conceding the doctrine applies.

F. Congress Has Not Precluded Judicial Review Here

Finally, EPA argues (at 27-29) that Congress has precluded judicial review here under the doctrine of *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). Two problems with that: (1) that doctrine does not apply here *at all*, and (2) even if it did, it does not preclude judicial review under the *Thunder Basin* factors. Instead, 42 U.S.C. §2000d-2 *affirmatively confirms* that judicial review is available here, rather than restricting it in any relevant way. And Defendants’ arguments here demonstrate that they have yet to internalize the lessons of their stinging *unanimous* defeat in *Axon*.

1. *Thunder Basin* doctrine does not apply here.

To begin with, the threshold for applying *Thunder Basin* doctrine—a “special statutory review scheme ... [that] preclude[s] district courts from exercising jurisdiction,” which “typically ... [is] review in a court of appeals following the agency’s own review process,” *Axon*, 598 U.S. at 185, is simply not present here *at all*. Section 2000d-2 does not vest review in courts of appeals following final decisions. Instead, by its terms it remarkably (1) neither vest review in *any* particular court (2) nor requires any final agency action. *Id.* Section 2000d-2 is thus not a “special statutory review scheme” at all. *Axon*, 598 U.S. at 185. Indeed, far from providing any “comprehensive review process,” *id.* at 186, §2000d-2 does not even provide a bare-bones scheme: vesting review in no particular court, under no particular timetable, with no particular specialized procedures. Instead, it is a *non-specific borrowing*

provision: explicitly adopting whatever judicial review provisions “may otherwise be provided by law,” *id.*—*i.e.*, the very antithesis of any “special statutory scheme.”

Instead of any special or comprehensive scheme, §2000d-2 merely confirms Congress’s intent that judicial review be available *very* broadly. It thus explicitly provides that “[a]ny ... *agency action* taken pursuant to section 2000d-1 of this title *shall be subject to such judicial review.*” §2000d-2 (emphasis added).

Every single aspect of this sentence is at odds with EPA’s contentions. *First*, the omission of “final” is presumptively intentional. *United States v. Shabani*, 513 U.S. 10, 14 (1994) (“When a statutory term is absent in one statute, but is explicit in analogous statutes, ‘Congress’ silence ... speaks volumes.”) (citation omitted)). Yet EPA’s interpretation effectively smuggles “final” back into §2000d-2 by insisting that only *post-enforcement* review is available, thereby flouting Congress’s intent.

Second, Congress’s use of “any ... agency action” means just that—*any* agency action is reviewable, whether final, post-enforcement, or neither. *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (“Read naturally, the word ‘any’ has an expansive meaning, that is ‘one or some indiscriminately of whatever kind.’”) (citation omitted)). But EPA’s interpretation nullifies Congress’s use of “any” and instead renders vast swaths of “agency action taken pursuant to [Section 602]” unreviewable.

Third, EPA’s interpretation also obliterates Congress’s use of the word “shall,” since the “mandatory ‘shall’ normally creates an obligation impervious to judicial discretion.” *Murphy v. Smith*, 138 S.Ct. 784, 787 (2018). But while Congress has commanded that EPA’s actions here “*shall* be subject to judicial review,” EPA’s *Thunder Basin* arguments turn that statutory command upside-down.

The State’s interpretation is reinforced by §2000d-2’s explicit preclusion any committed-to-agency-discretion defense, further confirming Congress’s intent to make judicial review *broadly available* rather than preclude all pre-enforcement review.

In contrast, EPA’s arguments essentially rely exclusively on the second sentence of §2000d-2, which applies to “action, not otherwise subject to judicial review, terminating or refusing to grant or

to continue financial assistance upon a finding of [a violation.]” By its terms that sentence does not apply here at all, since no such action has taken place. Instead, this case is governed by the *first sentence*, which applies to “[a]ny ... agency action” under Title VI. §2000d-2 (emphasis added). And even within this second sentence, Congress’s intent is clear: to make judicial review available even if it would “not otherwise [be] subject to judicial review,” *id.*—further confirming Congress’s intent to make judicial review broadly available, rather than preclude it.

For all of these reasons, the predicates for *Thunder Basin* doctrine applying are wholly lacking here and there is no basis even to reach the *Thunder Basin* factors.

2. The *Thunder Basin* factors favor review here

Even if Congress in §2000d-2 had created a “special statutory review scheme” and “comprehensive review process” that could serve as the predicate for applying *Thunder Basin* doctrine, the *Thunder Basin* factors all decisively point away from precluding review, particularly under *Axon*.

Functional Denial of Judicial Review. Here, as in *Axon*, the State asserts that it is “‘being subjected’ to ‘unconstitutional agency authority’”—*i.e.*, subject to mandates that violate the Spending Clause and proceedings infected with a non-delegation-doctrine violation. 142 S.Ct. at 191. As in *Axon*, deferred review of the State’s “constitutional claims would come too late to be meaningful.” *Id.* In addition, EPA itself backhandedly acknowledges the functional unavailability of post-enforcement judicial review. Even in its own telling (at 8), the stakes are so high no party has ever persevered long enough to obtain judicial review in “the fifty years since EPA adopted its Title VI implementing regulations.”

Collateral To Review Provisions. As in *Axon*, because the State is “challenging [EPA’s and DOJ’s] power to proceed at all,” its challenges “qualif[y] as ‘collateral.’” Here, the State contends that EPA is wholly without power to delegate power to private groups and impose disparate-impact and cumulative-impact mandates *at all*. Full stop. Accepting EPA’s contrary arguments here, as in *Axon*,

“would strip the collateralism factor of its appropriate function.” 142 S.Ct. at 193.

Outside Agency Expertise. As Defendants conceded in *Axon*, agencies “‘lack[] expertise in interpreting the Constitution.” *Id.* at 195 (citation omitted). Also as in *Axon*, the State “allege[s] injury ... from subjection to all agency authority” since all relevant authority here is *ultra vires*. *Id.* “Those claims of here-and-now harm would remain no matter how much expertise could be ‘brought to bear’ on the other issues these cases involve.” *Id.* (citation omitted)

Axon. Finally, although EPA cites (at 27) *Axon* for what the three *Thunder Basin* factors are, it notably makes *zero attempt* to wrestle with *Axon*’s reasoning as to *any* of those factors. EPA’s silence on that front speaks volumes and renders their *Thunder Basin* arguments unserious.

II. THE STATE IS ENTITLED TO SUMMARY JUDGMENT ON ITS NON-DELEGATION CLAIM

A. EPA’s Delegation Of Power To Private Groups Violates The Constitution

EPA first suggests (at 36) that it immune to private non-delegation doctrine because only Congress can violate it. But EPA is conflating the two non-delegation doctrines. While the *public* non-delegation doctrine governs what powers Congress can delegate to the Executive, the *private* non-delegation doctrine recognizes that the “[o]ur Constitution permits only the federal government to exercise federal power.” *National Horsemen’s Benevolent & Protective Ass’n v. Black*, 53 F.4th 869, 880 (5th Cir. 2022). That foundational principle is violated *whenever* governmental power is delegated to private groups, whether the perpetrator is Congress or the Executive.

The rest of EPA’s defense relies on mischaracterizing the nature of the delegation here, contending (at 37-38) that the Private Special Interest Groups “‘functions subordinately’ to EPA,” and that EPA was merely “[s]eeking concurrence on extending EPA’s regulator deadline.” But EPA never disputes that Sierra Club *possessed an absolute veto over extension of informal negotiations that it could exercise singularly*. That is the sort of power wielded by absolute monarchs—not mere subordinates. Indeed, by EPA’s logic, the Fifth Circuit functions subordinately to this Court, since this Court by its

judgments can propose outcomes that are merely subject to the court of appeal’s “concurrence.”

The transfer of governmental power to the Private Special Interest Groups is confirmed by the fact that EPA felt compelled to horse-trade non-public information to secure Sierra Club’s blessing. *See* Seidemann Decl. ¶¶ 65-70; P.I. at 18. EPA *never* denies doing just that. But why would EPA need to barter with Sierra Club to *regain* the right to exercise governmental power in the manner that EPA preferred if it had not delegated that power away to begin with? That sordid quid-pro-quo makes perfectly clear who is subordinate to whom.

EPA’s is similarly mistaken in contending (at 38) that the private groups “ha[ve] no role whatsoever in any of EPA’s investigative decision.” In March 2023, Sierra Club could—if it wanted—have compelled EPA either to issue formal findings of violations or terminate its investigation entirely, neither of which EPA judged appropriate. Sierra Club’s ability to compel EPA to exercise government power in a manner that EPA judged unwarranted belies EPA’s “no role whatsoever” characterization. Instead, Sierra Club had a *commanding role* and EPA was compelled to follow its direction.

EPA also points to *Curran v. Wallace*, 306 U.S. 1 (1939) as supporting its actions here. By *Curran* upheld a *ratification requirement* by a *broad community*, not an absolute veto that could be exercised by one organization singularly. Assuming it remains good law, *Curran* is thus inapposite where, as here, the delegation “leaves [the agency] impotent to choose its [policy] without [the private group’s singular] permission.” *Association of Am. Railroads v. DOT*, 721 F.3d 666, 671 (D.C. Cir. 2013) *rev’d on other grounds* 575 U.S. 43 (2015).

B. EPA’s Actions Violate The APA

EPA’s delegation of its governmental powers, both globally and specifically in March 2023, also violates the APA. The constitutional violation alone contravenes the APA. 5 U.S.C. §706(2)(B). But EPA’s actions also arbitrary and capricious, and thus §706(2)(A), for two reasons.

First, EPA has *never* offered any rationale for why it agreed to the 180-day deadline given its

prior admissions such a timetable was “impracticable,” “arbitrary,” and “unrealistic.” P.I. at 20. EPA’s failure to proffer *any* supporting rationale violates the APA. *See, e.g., Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (“[A]gency action is arbitrary and capricious if it departs from agency precedent without explanation.” (citation omitted)). Indeed, APA violations are rarely come so glaring as admitting a self-imposed deadline is both “arbitrary” and “impracticable” then acquiescing to a judgment requiring it to follow that regulation without explanation.

Second, EPA has never explained why it conferred rights purely on the Private Special Interest Groups. It would be one thing if EPA imposed the 180-day deadline *globally* for *everyone’s* complaints. But EPA has instead created a two-tiered system of justice in which only favored groups enjoy special rights that their plebian counterparts lack. Even assuming such a system is legally defensible *at all*, EPA has yet to offer any actual defense of it. *See, e.g., Lilliputian Sys., Inc. v. Pipeline & Hazardous Materials Safety Admin.*, 741 F.3d 1309, 1313 (D.C. Cir. 2014) (“[A]n agency cannot treat similar situated entities differently unless it ‘supports the disparate treatment with a reasoned explanation.’” (cleaned up)).

Because EPA’s decision to delegate new rights to the Private Special Interest Groups lacks any offered justification—even one offered *post hoc*—the State is entitled to judgment on its Count II.

III. DEFENDANTS’ DISPARATE-IMPACT REGULATIONS VIOLATE THE SPENDING CLAUSE

The State’s disparate-impact claims are readily and most easily resolved under the Spending Clause, which forbids imposition of *any conditions* that are not *unambiguously* established in statutory text. Title VI’s text does not unambiguously impose any potential disparate-impact liability.

A. The Spending Clause Prohibits Enforcement Of Ambiguous Conditions Against The States

Much like their standing arguments, EPA’s arguments about the merits of the State’s Spending Clause claim ignore critical aspects of Supreme Court doctrine—specifically the prohibition on enforcing any condition not *unambiguously* established by statutory text. *See supra* at 6-8. EPA thus contends that it is enough that “the statute is clear that acceptance of federal funds obligates the State

to comply with *a* condition,” Opp.47 (emphasis added)—rather than the specific condition at issue.

EPA’s argument squarely violates *Arlington Central*. There, it was undeniably clear that acceptance of federal funds bound the States to *a* condition: *i.e.*, paying costs including *attorneys’ fees* to prevailing parties in IDEA litigation. 548 U.S. at 293-94. So EPA’s position were the actual Spending Clause standard, the Court would have stopped there and simply affirmed.

Instead, *Arlington Central* reversed for the same reasons that EPA’s arguments fail here: it is not enough to be clear about *a* condition. Instead, the Spending Clause also prohibits enforcement of *any* condition that is not “set out ‘unambiguously’” in the statutory text. *Id.* at 296; *accord id.* at 301 (statute must be “unambiguous notice”). And because the IDEA *statute* did not unambiguously establish the State’s liability for *expert fees*, the Constitution forbade imposition of *that condition*. The Supreme Court has even applied this principle *specifically to Title VI*, holding that emotional distress damages were unavailable because ‘if Congress intends to impose a condition on the grant of federal moneys, *it must do so unambiguously*.’” *Cummings*, 142 S.Ct. at 1569-70 (citation omitted) (emphasis added). But EPA ignores this principle—as well as *Arlington Central* and *Cummings*—entirely. Those evasions concede this issue.¹⁶ Because §601 prohibits *only* intentional discrimination, the applicable question under *Arlington Central* and *Cummings* is whether §602 “unambiguously” establishes Defendants’ authority to impose disparate-impact mandates. Defendants do not even genuinely argue that it does.

B. Section 602 Does Authorize Defendants’ Disparate Impact Mandates

Defendants do not appear to even *attempt* to argue that the *statutory text* of §602 *unambiguously* gives them authority to impose disparate-impact mandates. The closest they come on that front (at 17) tellingly attempts to smuggle in “the conditions attending EPA’s grants and the assurances the

¹⁶ *Lau v. Nichols*, 414 U.S. 563, 569 (1974) does not address this unambiguous-text aspect of Spending Clause doctrine, and indeed rejects a claim under the Tenth Amendment rather than the Spending Clause. Moreover, if *Lau* were the blanket blessing under the Spending Clause that EPA contends, *Cummings* would have come out the other way.

Similarly, even if Defendants were correct about *Guardians* (and they are not), it was evaluating Section 602 under *de novo* review, rather than the unambiguous-clarity standard that Spending Clause doctrine demands.

State signed.” But the requisite clarity “must come directly from the statute.” *Texas Educ. Agency v. U.S. Dep’t of Educ.*, 992 F.3d at 361-62.

Defendants similarly argue (at 48) that Section 601 “unambiguously prohibits discrimination.” True enough for *intentional* discrimination. But the contours of that prohibition and Defendants’ authority to “effectuate” it must be *unambiguously clear* to bind States to the specific requirement at issue, as both *Arlington Central* and *Cummings* make clear. Much as courts cannot expand Spending Clause conditions like “attorneys’ fees include expert fees” and “damages include emotional distress damages,” Defendants cannot backfill that “discrimination” in §601 includes disparate-impact liability—particularly given “how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with’ §601, when §601 permits the very behavior that the regulations forbid.” *Alexander v. Sandoval*, 532 U.S. 275, 286 n.6 (2001) (citation omitted); *see also Arlington Central*, 548 U.S. at 300-303.

In any event, for all the reasons that §602 does not grant Defendants disparate-impact authority under *de novo* review (P.I. at 20-37; *infra* §IV), it cannot do so when the burden is elevated to unambiguous clarity as Supreme Court precedent demands. Another case ignored by Defendants makes this particularly clear: *Brnovich v. DNC*, 141 S.Ct. 2321 (2021) (raised prominently: P.I. at 27).

In *Brnovich*, the Court held that the text of §2 of the VRA was insufficient to impose the “freewheeling disparate-impact regime” that was “employed in Title VII.” *Id.* at 2340-41. It is undisputed that Defendants’ regulations adopt mandates equivalent to Title VII’s “freewheeling disparate-regime” here. *Id.* But their authority to do so is *far* weaker than in *Brnovich* for two reasons. *First*, VRA §2—like many other civil rights provisions, but not Title VI—contained *explicit results language*. *See* 52 U.S.C. §10301. If *some* results statutory language is insufficient to adopt Title VII-like mandates, *no such language at all* is necessarily wanting *a fortiori*. *Second*, *Brnovich* was construing VRA §2 *de novo*, rather than evaluating whether the statutory text *unambiguously* established Title VII-like

mandates. What statutory text does not establish *at all* certainly does not do so *unambiguously*.

C. The Requisite Clarity Must Be Provided By Statute Under Controlling Fifth Circuit Precedent

The Fifth Circuit has held *categorically and unequivocally*: “The needed clarity cannot be so provided [by regulation]—it must come directly from the statute.” *Texas Educ. Agency*, 992 F.3d at 361. Indeed, “relying on regulations to present the clear condition ... is an acknowledgment that Congress’s condition was not unambiguous” and thus violates the Spending Clause. *Id.* The Fourth and Eleventh Circuits have equivalent categorical holdings. *Virginia Dep’t of Educ. v. Riley*, 106 F.3d 559, 567 (4th Cir. 1997) (en banc); *West Virginia*, 59 F.4th at 1147-48.

EPA grudgingly appears to accept this premise, arguing (at 48) that *Texas Education Agency* “stand[s] for the unremarkable point that a funding condition or a waiver of sovereign immunity *must be unambiguous in the statute*.” Opp. 48 (emphasis added). But EPA’s arguments are based on its erroneous premise (at 47) that it is sufficient that the existence of “a condition” must be unambiguous. *Arlington Central* and *Cummings* make plain that even where the existence of *a condition* is unambiguous, the contours of the specific liability at issue must also be.

Section 601 does not unambiguously include disparate-impact liability. Indeed, its plain text unambiguously establishes the opposite: that *only* intentional discrimination is prohibited. *Sandoval*, 532 U.S. at 280. The only *clear* imposition of disparate-impact liability comes from *regulations*, which *Texas Education Agency* squarely rejects as insufficient. And “[a]llowing an executive agency to impose a condition that is not otherwise ascertainable in the law Congress enacted ‘would be inconsistent with the Constitution’s meticulous separation of powers.’” *West Virginia*, 59 F.4th at 1147 (quoting *Texas Education Agency*, 992 F.3d at 362). Because no disparate-impact mandate is unambiguously established by Title VI’s text alone, Defendants’ regulations are unconstitutional. Nor does §602’s bare “effectuate” text provide Defendants authority to impose disparate-impact mandates at all, let alone do so unambiguously. See P.I. at 20-37; *infra* §IV.

IV. SECTION 602 DOES NOT AUTHORIZE DISPARATE-IMPACT MANDATES

Even under *de novo* review, Defendants lack authority under §602 to impose disparate-impact mandates.

A. *Guardians* Is Not Precedential On The Disparate-Impact Issues Here

Contrary to Defendants’ contentions (at 5, 39-41), the Supreme Court’s decision in *Guardians Ass’n v. Civ. Serv. Comm’n of City of New York*, 463 U.S. 582 (1983) does not provide any precedential authority upholding their authority to impose disparate-impact mandates. *Guardians* was a fractured decision with no opinion for the Court. Its precedential effect is thus governed by *Marks v. United States*: “the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” 430 U.S. 188, 193 (1977). In *Guardians* the actual holding was thus that “in the absence of proof of discriminatory animus, compensatory relief should not be awarded to private Title VI plaintiffs”—which was a fully sufficient (and the narrowest) basis to affirm the judgment below. 463 U.S. at 584.

Defendants’ contrary contentions not only misread *Guardians*, but further violate *Marks* by trying to cobble together a holding from one majority and *four dissenting votes*, even though *Marks* makes plain that the only positions that count come from “Members who *concurred* in the judgment[.]” 430 U.S. at 193 (emphasis added); accord *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 440 (5th Cir. 2021) (en banc) (The *Marks* “principle ‘is only workable where there is some common denominator upon which all of the justices *of the majority* can agree.’” (citation omitted) (emphasis added)).

In any event, even if Defendants’ reading of the precedential effect of *Guardians* was ever defensible, it no longer is. That is because the Supreme Court subsequently resolved that question conclusively *itself* in *Sandoval*. There, in discussing *Guardians*, the Court explained that “*no opinion of this Court has held*” that “regulations promulgated under §602 of Title VI may validly proscribe activities that have a disparate impact on racial groups” *even though* “five Justices in *Guardians* voiced that view.”

532 U.S. at 281 (emphasis added). That passage definitively resolves what the precedential effect of *Guardians*. “No opinion ... has held” means just that: no binding precedent exists. *Id.* That holding is further confirmed by the fact that *Sandoval* “assume[d]” that disparate-impact regulations were valid—something the Court would have *zero need to assume* if it had already *held* as much.¹⁷

B. Defendants’ Disparate-Impact Mandates Violate The Plain Text Of Title VI

1. Disparate Impact Requirements Do Not “Effectuate” Section 601’s Prohibition On Intentional Discrimination

Defendants’ argument that their disparate-impact mandates “effectuate” §601’s prohibition purely of intentional discrimination squarely contravenes the plain meaning of “effectuate.” Defendants never deny that “[a] regulation cannot ‘effectuate’ a statutory right by creating a new and different right.” *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944 (9th Cir. 2003) (holding that a Title VI “disparate-impact regulation cannot create a new right”). And the Supreme Court “*consistently recognized a distinction* between claims of discrimination based on disparate treatment and claims of discrimination based on disparate impact” and demanded that “courts *must be careful to distinguish between these theories*.” *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003) (emphasis added). But Defendants’ construction obliterates these distinctions and thereby “create[s] a new and different right.” *Save Our Valley*, 335 F.3d at 944. Indeed, the federal government *itself* has characterized its disparate-impact regulations as “contain[ing] *rights-creating language*.” *Sandoval*, 532 U.S. at 291 (emphasis added). That is *far* beyond what the plain text of “effectuate” will bear.

Defendants’ textual analysis is quite scant, consisting of a single paragraph (at 41). It all boils

¹⁷ For similar reasons, EPA’s reliance on statement that “*Sandoval* ‘left untouched *Choate*’s apparent approval of the promulgation and enforcement of disparate-impact regulations by federal agencies”” is unavailing. Opp. at 40-41 (quoting *Rollerson v. Brazos River Harbor Navigation Dist. of Brazoria Cnty. Texas*, 6 F.4th 633, 643 (5th Cir. 2021)). “Apparent approval” is not binding precedent rule any more than a cobbled-together view of dissenters and one Justice in the majority. “Apparent approval” is *at best* dicta. And “[b]reath spent repeating dicta does not infuse it with life.” *Metro. Stevedore Co. v. Rambo*, 515 U.S. 291, 300 (1995).

Further underscoring *Rollerson*’s lack of precedential effect on this issue, that opinion expressly stated that “there is a reasonable argument that *Choate*’s approval of such regulations was mere dictum,” rather than a holding, and the panel therefore only “assume[d] arguendo that the DOD’s disparate-impact regulations [we]re valid.” 6 F.4th at 643 n.6. Federal courts do not *assume* what they have already *held*.

down to their contention that “effectuate” “empowers federal agencies to determine *how best to prohibit intentional discrimination*.” Opp.41 (emphasis added). But that premise is readily refuted by *Sandoval*. If prohibiting actions with disparate impacts was really just another way of “prohibit[ing] intentional discrimination” (Opp.41), then such a disparate-impact prohibition would be enforceable by Title VI’s private right of action: after all, “regulations applying §601’s ban on intentional discrimination are covered by the [private] cause of action.” *Sandoval*, 532 U.S. at 283. But it is precisely *because* disparate-impact mandates are *not* a form of prohibiting intentional discrimination that they are not privately enforceable under *Sandoval*. Defendants’ sole textual argument thus violates that binding authority.

2. Disparate-Impact Mandates Actually *Conflict* With Section 601

Defendants also implicitly concede that disparate-impact mandates cannot “effectuate” §601’s prohibition purely of intentional discrimination if there is severe tension between the two standards. Instead, they argue only (at 47) that no such severe tension exists. Not so.

Justice Scalia’s concurrence in *Ricci v. DeStefano*, 557 U.S. 557 (2009) could not be clearer on this point, as the State’s brief made plain (at 3, 24). Defendants make no effort to engage with *any* of that reasoning, which gravely undermines their denial of tension between the two standards. True, Justice Scalia’s *Ricci* concurrence is not binding precedent. But it is persuasive authority, and Defendants’ inability or unwillingness to address its reasoning effectively concedes its correctness.

In any event, the *majority opinion* in *Ricci* is binding precedent. And it is clear about the conflict between intentional-discrimination and disparate-impact standards: explicitly identifying the potential “statutory *conflict*” and “*conflict* between the disparate-treatment and disparate-impact provisions,” as well as their “*competing expectations*.” *Ricci*, 557 U.S. at 583-84, 593 (emphasis added). The Court’s opinion in *Ricci* thus expressly recognized the very conflict that Defendants implausibly deny.

The conflict between disparate-impact and intentional-discrimination standards is also particularly apparent given the defining characteristics of the two standards: *i.e.*, that they do—and *do*

not—require proof of intent, respectively. Indeed, transmuting lead into gold is a less radical transformation than what Defendants’ regulations attempt to pull off here: at least both are still metals. In contrast, Defendants’ regulations effectively transform §601’s intentional-discrimination-only prohibition into its antithesis and an oxymoron to boot: a putative *intentional*-discrimination standard that *requires no actual proof of intent*. That is not effectuation, but rather metamorphosis.

In truth, Defendants’ arguments here resemble nothing so closely as the *dissent* in *Ricci*, which contended there was not “even a hint of ‘conflict’ between ... disparate-treatment and disparate-impact provisions” because they “advance the same objectives.” *Ricci*, 557 U.S. at 624-25 (Ginsburg, J., dissenting). Instead, like EPA here, the dissent saw only a “supposed ‘conflict.’” *Id.* at 627. Whatever the merits of those arguments might have been *pre-Ricci*, they are now foreclosed in its aftermath.

More generally, Defendants never deny that disparate-impact mandates often *require* governmental actors to make race-conscious decisions. As explained previously and below, that is in severe tension with—and often outright violates—the Equal Protection Clause, whose standards Title VI mirrors. P.I. at 24, 34-35; *infra* §IV.E.

3. The Lack Of A Good-Faith Defense Dooms Defendants’ Regulations

Defendants admit (at 45) their regulations do not permit any good-faith/lack-of-discriminatory-intent defense. That admission is fatal.

Because §601 only prohibits actions taken with intentional discriminatory intent, it cannot—*by definition*—impose liability where a decision-maker could prove the absence of discriminatory intent. Such liability *flouts* rather than “effectuates” §601. *See* P.I. at 25-26. That is like a regulation “effectuating” a prohibition on murder that criminalizes non-fatal assaults. One cannot “effectuate” a statutory provision *by obliterating its defining feature*. But that is precisely what Defendants have done.

EPA points (at 45-46) to its “substantial legitimate justification” defense as rendering its approach lawful. But that defense merely mitigates the *harms* caused by its illegal regulations. They do

nothing to address the foundational flaw that their regulations permit liability in the complete absence of intentional discrimination, thereby making of mockery of the claim to be “effectuating” §601.

EPA’s arguments ultimately are akin to arguing that a libel statute could “effectuate” the First Amendment even when it does not make truth a complete defense. That would be a constitutional abomination as the First Amendment does not permit *any* libel liability for truthful speech. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). So too with Section 601: it does not countenance *any* liability in the where intentional discriminatory intent is provably absent. Because Defendants’ regulations concededly authorize just that, they are patently unlawful.

C. Statutory Context Confirms That Defendants Lack Authority To Issue Disparate-Impact Regulations

EPA offers only scant response to the State’s arguments about context. It notably does not deny the State’s central premise: that, under its interpretation, Title VI sticks out like a sore thumb within civil rights statutes. In virtually every other case where disparate-impact liability exists, it is *because Congress created it with explicit statutory language*. See P.I. at 26-27. Because a statute giving the Executive the free option to choose whether or not to impose disparate-impact liability would be a *radical* outlier within civil rights laws, that is a strong indication that Congress intended no such thing. See, e.g., *Jones v. United States*, 526 U.S. 227, 234 (1999) (It is a “fair assumption that Congress is unlikely to intend any radical departures from past practice without making a point of saying so.”).

EPA also does not even attempt to hazard a response to *Kamps v. Baylor Univ.*, 592 F. App’x 282 (5th Cir. 2014). And it certainly does not explain how its disparate-impact regulations could even conceivably survive under the standard *Kamps* sets out: *i.e.*, that “[w]hen Congress wants to allow disparate impact claims, it uses particular language,” which is absent in both the ADA and “Title VI.” *Id.* at 285-86. Following the logic of *Kamps* would be fatal to Defendants here, and Defendants tellingly refuse to identify any flaws in that logic.

D. Canons Of Construction

Defendants’ textual arguments are particularly unserious as notably refuse to engage with many of the applicable canons of construction identified by the State (at 29-32). Indeed, the word “canon” appears only once in EPA’s brief—in a footnote (at 47 n.16).

Presumption of Good Faith. Defendants neither acknowledge the presumption of good faith for State actors (P.I. at 30-31), nor denies that their regulations violate it. That alone strongly supports the State’s interpretation. Defendants’ silence is particularly jarring because they are quick to claim a presumption of good faith for their actions under mootness (at 26), yet refuse to acknowledge the federal courts presume the good faith of *state* officials too.

Federalism Canon. Despite Defendants’ doubts—snarkily expressed by use of scare quotes (at 47 n.16)—the federalism canon very much exists and is supported by a *mountain* of Supreme Court precedent.¹⁸ Indeed, the Court has specifically recognized that canon *by name*. See, e.g., *West Virginia v. EPA*, 142 S.Ct. at 2621 (Gorsuch, J., concurring) (referencing “another *longstanding* clear-statement rule—the *federalism canon*” (emphasis added)). Defendants would have done well to reconcile themselves to the canon’s existence.

Defendants’ remaining response is a non-sequitur, contending (at 47 n.16) that “Congress may alter the federal-state balance when validly legislating pursuant to its Spending Clause power.” Sure, it often *can*. But the entire point of the federalism canon is that courts presume that Congress *has not done so* unless it supplies a clear statement that “make its intention clear and manifest.” *Gregory*, 501 U.S. at 460-61. Indeed, for Spending Clause legislation, Congress must do so *unambiguously*. *Supra* §III.A. The federalism canon thus also strongly supports the State here, since “effectuate” is hardly a clear expression of intent to “alter the federal-state balance.” *Gregory*, 501 U.S. at 460-61.

¹⁸ See, e.g., *Bond v. United States*, 134 S.Ct. 2077, 2089 (2014); *U.S. Forest Serv. v. Compasture River Pres. Ass’n*, 140 S.Ct. 1837, 1849-50 (2020); *Onvasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426, 432 (2002); *Gregory*, 501 U.S. at 460-61; *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006); *United States v. Bass*, 404 U.S. 336, 349 (1971).

Omitted Words Canon. Defendants’ implicit-only response to the omitted-words canon fails as explained above regarding context. *Supra* §IV.C.

E. Defendants’ Interpretation Creates Severe Constitutional Doubts

Defendants’ interpretation of §602 is also precluded by the doctrine of constitutional avoidance, since disparate-impact mandates often *compel* discrimination based on race to avoid liability in a manner that the Equal Protection Clause condemns. And the doubts previously identified by the State are now even stronger following *Fair Admissions*, which was decided in the interim.

Defendants do not even attempt to respond to the State’s demonstration that their disparate-impact regulations involve the use of raced-based decision-making in a manner that is “at least as crude, heavy-handed, and constitutionally dubious as in *Parents Involved*” P.I. at 34-35. The use of race in *Parents Involved* was held to be outright unconstitutional. Defendants’ conduct here is thus *at least* constitutionally doubtful, triggering avoidance doctrine.

Defendants also tellingly never deny that disparate-impact mandates often “*require*” intentional discrimination,” instead only arguing that “*Ricci* does not stand for th[at] proposition.” Opp.17. Justice Scalia’s concurrence plainly does, but Defendants steadfastly refuse to engage with its reasoning. Nor would any such denial be credible. Under the borrowed-Title-VII standard, whenever there is a statistical disparity, the decision-maker is obliged to reduce or eliminate it—a task that can only be performed *by taking race-conscious actions*. *Ricci*, 557 U.S. at 594-95 (Scalia, J., concurring) Indeed, how else could one even know if actions taken to eliminate disparate impacts were working *except* by evaluating results in explicitly race-based terms?

By refusing to deny that their disparate-impact mandates often *require* race-based decision-making, Defendants’ position ultimately boils down to an implicit contention that such consideration of race is a sort of “good discrimination” that comports with the Constitution. The Supreme Court begs to differ: “Distinctions between citizens solely because of their ancestry are by their very nature

odious to a free people whose institutions are founded upon the doctrine of equality.” *Fair Admissions*, 143 S.Ct. at 2160 (citation omitted) (emphasis added). And “*all ‘racial classifications*, however compelling their goals,’ *[a]re ‘dangerous.’*” *Id.* at 2156 (citation omitted) (emphasis added).

But disparate-impact mandates mandate are predicated precisely on making just such “odious” and “dangerous” classifications. After all, unless there is a disparate impact to a group high up enough in EPA’s intersectionality pyramid, EPA simply could not care less about it under its disparate impact regulations. Race is the alpha and omega of those regulations. Indeed, Defendants’ Title VI disparate-impact mandates simply cannot function *whatsoever* without first making “racial classifications” and then engaging in the “sordid business [of] divvying us up by race.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurral). The “inherent folly of that approach—of trying to derive equality from inequality” is manifest, particularly as it amounts to “pick[ing] winners and losers based on the color of their skin.” *Fair Admissions*, 143 S.Ct. at 2160, 2175.

In applying both the Equal Protection Clause and Title VI, the Supreme Court has made plain that “[e]liminating racial discrimination *means eliminating all of it.*” *Id.* at 2161 (emphasis added). Because disparate-impact mandates often “affirmatively *require* [race-based decisionmaking] when a disparate-impact violation *would* otherwise result” and engaging in a “type of racial decisionmaking is ... discriminatory,” *Ricci*, 557 U.S. at 594 (Scalia, J., concurring), they are part of that “all” discrimination for which elimination is required. *Fair Admissions*, 143 S.Ct. at 2161.¹⁹

F. The Major Questions Doctrine Controls This Case

Defendants do not deny (at 49) that *all three* independent triggers for the major questions doctrine exist here: *i.e.*, the issue of Defendants’ authority to impose disparate-impact mandates is (1) a

¹⁹ EPA attempts (at 48-49) to distinguish *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015) on the basis of putative “safeguards” in EPA’s disparate-impact regulations. But their regulations do not actually contain any such safeguards, which permit liability based on “effect” alone. *See* 40 C.F.R. §7.35(b), (c). And this case makes clear just how unconstrained liability is under those regulations, where EPA for more than a year believed that liability could be premised on disparate environmental *benefits*, *supra* at 16—and only retreated from that position after this suit was filed.

“matter of great political significance,” (2) “it seeks to regulate a significant portion of the American economy,” and (3) it “intrud[es] into an area that is the particular domain of state law.” *West Virginia v. EPA*, 142 S.Ct. 2587, 2620-21 (2022) (Gorsuch, J., concurring). Because any *one* of these is sufficient to trigger the doctrine, those concessions are fatal here.

Ignoring all these standards, Defendants only argue that doctrine is inapplicable because disparate-impact mandates are not a “transformative expansion in [its] regulatory authority.” Opp. at 49 (quoting *West Virginia*, 142 S.Ct. at 2609). But while “transformative expansion” is sufficient to trigger the doctrine, it hardly is necessary. The Supreme Court, for example, had no difficulty in applying the major questions doctrine in *Alabama Realtors* and *NFIB*, without even *mentioning* any such putative “transformational expansion” of “long-extant statutes,” let alone insisting on one. *Alabama Ass’n of Realtors v. HHS*, 141 S.Ct. 2485, 2489 (2021); *NFIB v. OSHA*, 142 S.Ct. 661, 664-65 (2022). While Defendants no doubt *wish* the major questions doctrine was limited to “transformational expansion[s]” of “long-extant statute[s],” both decisions make plain that it is not.

In any event, Defendants’ disparate-impact mandates are quite literally a “transformational expansion”: they transform Title VI from the pure intentional-discrimination-only prohibition into one so expansive as to be akin to the “freewheeling disparate-impact regime” of Title VII. *Brnovich*, 141 S.Ct. at 2340-41. Similarly, EPA’s construction of §602 results in a radical transformation of the agency’s Clean Air Act authority, converting that statute from one regulating specific pollutants and environmental impacts into a tool for *far-reaching* social engineering in the name of “equity.”

Even in mythology, alchemists would struggle to pull off such a transformation.

G. This Court Owes No Deference To Defendants’ Interpretations

For similar reasons, Defendants are not entitled to deference to their interpretation of Title VI as authorizing disparate-impact liability. Deference does not apply where the “question [is] of deep ‘economic and political significance.’” *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted).

The State specifically argued that this was the case for the disparate-impact-authority question (at 35-36), and EPA’s response does not deny *either* the economic or political significance here—thereby conceding both the significance and deference issues. *Id.*; accord *Biden v. Nebraska*, 143 S.Ct. 2355, 2375 (2023); *Texas v. United States*, 809 F.3d 134, 181-82 (5th Cir. 2015) *aff’d by equally divided court* 136 S.Ct. 2271 (2016). Deference is particularly unwarranted as Congress typically resolves the whether civil rights statutes permit disparate-impact liability *itself*. P.I. at 26-27; *supra* §IV.C. And deference is further inapplicable given the constitutional doubts raised by Defendants’ interpretation. *See Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Engineers*, 531 U.S. 159, 173 (2001).²⁰

H. Defendants’ Resort To Legislative History Is Unpersuasive

Lacking credible arguments under the text and context of Title VI, and the canons of construction, Defendants seek refuge in legislative history. That attempt fails for two reasons.

First, Defendants’ reliance (at 41-42) on a single floor statement and second statement by a non-legislator is worth little, as “floor statements by individual legislators rank among the least illuminating forms of legislative history.” *NLRB v. SW Gen., Inc.*, 137 S.Ct. 929, 943 (2017). In any event, the statements stand only for the unremarkable proposition that agencies would fill in *some* details under §602. They do not even address disparate-impact liability specifically.

Second, Defendants’ reliance (at 42-43) on Congressional *inaction* as ratification is unavailing. “[C]ongressional silence lacks persuasive significance ... *particularly where administrative regulations are inconsistent with the controlling statute*”—as is the case here. *Brown v. Gardner*, 513 U.S. 115, 121 (1994) (emphasis added). Similarly, “failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute.” *United States v. Craft*, 535 U.S. 274, 287 (2002).

In any event, whatever inferences might be drawn from Congress’s *inaction* are overwhelmed

²⁰ The State preserves the argument that deference does not apply because *Chevron* should be overruled—a question that the Supreme Court is currently considering expressly in *Loper Bright Enterprises v. Raimondo*, 143 S. Ct. 2429 (2023) (granting certiorari of that question).

by the actual *action* Congress did take: In 1991 it specifically codified disparate-impact liability for Title VII, but did not lift a finger to ratify Defendants’ putative authority to impose disparate-impact mandates under Title VI. *See* Civil Rights Act of 1991, Pub. Law 102–166, 105 Stat 1071 (1991). That strongly militates against reading any ratification here. *See, e.g., Jama v. ICE*, 543 U.S. 335, 341 (2005). Moreover, the Supreme Court in *Sandoval* rejected a similar ratification/acquiescence argument. *Sandoval*, 532 U.S. at 292-93.

V. EPA’S EXTRA-REGULATORY REQUIREMENTS ARE UNLAWFUL

EPA offers two defenses of its Extra-Regulatory Requirements (at 50-51): (1) they were mere “suggestions” offered only in informal negotiations and (2) its cumulative-impacts mandates are mere “guidance” and not binding requirements. Neither can withstand scrutiny.

Extending EPA the benefit of the doubt here, its right hand appears not to know what its left hand is doing. EPA’s June 16 Objection was clear that EPA was demanding evaluation of cumulative impacts, insisting that the State consider “whether the community is already disproportionately impacted by public health or environmental burdens.” Exh. 84 at 2. That objection carried the force of law (else LDEQ’s proposed permit grant would have become effective). *See* 42 U.S.C. §7661d. And the June 16 Objection singularly refutes EPA’s “mere suggestions” defense. In any event, EPA’s Letter of Concern makes plain its formal position that cumulative disparate-impacts analysis is required, demanding that the State “[c]onduct cumulative impact analyses” and setting forth a “minimum” for what those analyses should contain. Exh. 11 at 5-7; *id.* at 22 (“[S]uch an analysis should have been performed by LDEQ.”).

Moreover, EPA tellingly does not disavow its position that Title VI and its regulations demand consideration of cumulative disparate impacts and conducting public meetings. Absent such a disavowal, the clear import of EPA’s actions and positions is that the agency believes such requirements exist and that the agency intends to enforce them. *Supra* at 14-15.

Similarly, as set forth above (at 34-35), EPA’s putative “guidance” is actually binding as a practical matter—which is EPA no doubt intends it to be. Indeed, mere “guidance” could *not* create any binding requirement to consider cumulative disparate impacts. Yet EPA’s guidance is unequivocal that EPA has authority to mandate their consideration. *Supra* at 35.

The nature of Title VI also precludes EPA’s “mere guidance” defense. It is undisputed that Section 601 by itself does not create *any* disparate-impact requirements, let alone a mandate to consider *cumulative* disparate impacts. So EPA cannot “interpret” Section 601 to recognize any such mandates through guidance alone, instead it could only *create* them by legislative rulemaking employing its putative Section 602 authority to “effectuate” Section 601. *See, e.g., United Technologies Corp. v. EPA*, 821 F.2d 714, 719-20 (D.C. Cir. 1987) (holding that if a “rule is based on an agency’s power to exercise its judgment as to how best to implement a general statutory mandate, the rule is likely a legislative one”). But such legislative rulemaking requires notice-and-comment compliance and Presidential ratification—both of which concededly have not occurred here.

EPA’s cumulative-impacts mandates are thus unlawful.

VI. THE REMAINING REQUIREMENTS FOR INJUNCTIVE RELIEF ARE SATISFIED

Defendants also advance *at length* (at 54-60) the remarkable contention that even if their actions were illegal or unconstitutional, they still should be permitted to stand. Those arguments violate both controlling Fifth Circuit precedent and bedrock principles of equity.

A. The State Will Suffer Irreparable Harm Without An Injunction

Although Defendants spend considerable ink arguing otherwise (at 55-59), the issue of irreparable harm is remarkably straightforward under Fifth Circuit precedent. As noted above, “complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs.” *Louisiana v. Biden*, 55 F.4th at 1034 (cleaned up) (emphasis in original). This case falls comfortably within that “almost always.” More generally, because sovereign

immunity precludes recovering monetary damages against the federal government, any financial harms incurred by the State are irrecoverable injuries that constitute irreparable harm. *Id.*²¹

Similarly, Defendants’ constitutional violations under the Spending Clause and private non-delegation doctrine cause irreparable harm, as “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (citation omitted); *accord Johnson v. Johnson*, 244 F.3d 135 (5th Cir. 2000); *West Virginia*, 59 F.4th at 1149.

Defendants also contend (at 56-57) that the State’s suit comes too late to establish irreparable harm. That contention is, of course, difficult to reconcile with Defendants’ repeated contentions that the State’s suit is *premature* and that only post-enforcement judicial review is available. Defendants thus contend that the State *never* has had standing to bring a suit like this one and also that it unreasonably delayed making such a futile attempt. That shameless contradiction goes entirely unexplained.

Inconsistencies aside, when exactly was the State supposed to bring the suit? When EPA’s enforcement was so comatose that Title VI complaints were not even checked for more than a year? *Supra* at 36-37. One can only imagine what EPA would have said about a suit filed then. Instead, EPA’s recent and radical shift to hyper-aggressive (and lawless) enforcement of its Title VI policies greatly intensified the State’s injuries, which makes this suit’s timing perfectly appropriate. *Supra* at 36-37.

B. The Balance of Harms and Public Interest Support The State

The State agrees that the final two factors merge. Furthermore, as the Fifth Circuit has repeatedly made clear, “there is generally no public interest in the perpetuation of unlawful agency action.” *Wages & White Lion Invs., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) (cleaned up).

²¹ Much of Defendants’ irreparable-harm arguments simply regurgitates their arguments about justiciability or the merits. They fail for the reasons set forth above.

Defendants do not even *acknowledge* this holding, let alone attempt to explain why it is not controlling here. And while Defendants assert (at 60) that they would suffer irreparable harm from an injunction, an injunction “will do [them] no harm whatsoever. Any interest [they] may claim in enforcing an unlawful (and likely unconstitutional) [regulation] is illegitimate.” *BST Holdings, LLC. v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) *aff’d* 142 S.Ct. 661 (2022).

Defendants’ speculative concern (at 60) about potential resulting discrimination rings hollow as their challenged regulations *require* discrimination. And Defendants’ reliance (at 60) on reliance interests is difficult to credit where EPA both (1) admits that it has never taken a final enforcement action *ever* and (2) went for a year-long-plus stretch without even bothering to check its Title VI inbox. In any event, the reliance-interest requirement of *Department of Commerce* applies to agencies, not courts.

VII. ALTERNATIVELY, THIS COURT SHOULD VACATE DEFENDANTS’ CHALLENGED ACTIONS AND REGULATIONS

Even if injunctive relief were unavailable here, this Court should follow “the ordinary practice[, which] is to vacate unlawful agency action.” *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019). Indeed, “vacatur is the default remedy to correct defective agency action.” *National Parks Conservation Ass’n v. Semonite*, 925 F.3d 500, 501 (D.C. Cir. 2019).

Although the State did not seek vacatur in its preliminary injunction motion—there is no such thing as “preliminary vacatur”—vacatur is an available and appropriate form of permanent relief here. Nor do Defendants even attempt to argue that remand without vacatur would be appropriate.

CONCLUSION

For the foregoing reasons, this Court should grant the State’s motion for a preliminary injunction, deny Defendants’ cross-motion, and enter judgment for the State.

Dated: September 29, 2023

Respectfully submitted,

By: /s/ J. Scott St. John

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Counsel for Plaintiff State of Louisiana

**Pro Hac Vice admission application forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, Jeff Landry,

PLAINTIFF,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; et al.,

DEFENDANTS.

CIVIL ACTION NO. 2:23-cv-00692

DECLARATION OF COURTNEY J. BURDETTE

1. My name is Courtney Burdette. I am an attorney employed by the Louisiana Department of Environmental Quality ("LDEQ"). My current job title is Executive Counsel. I make this declaration in support of the State of Louisiana. I make this declaration based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I received a Bachelor of Arts degree from Howard University in 2003, and Juris Doctorate and Bachelor of Civil Law degrees from Louisiana State University in 2006.

3. I have been licensed to practice law in Louisiana since October 2006. I have been employed by LDEQ since January 2014. Prior to my appointment to the position of Executive Counsel in 2022, I served the Department in the positions of Attorney, Attorney Supervisor and General Counsel. In the course of my employment with LDEQ, I have represented LDEQ in permitting matters before state district and appellate courts, as well as administrative law tribunals. I have also reviewed LDEQ permitting decisions for legal sufficiency, in particular, compliance with federal and state laws.

LDEQ'S RECEIPT OF EPA GRANTS

4. LDEQ routinely applies for and receives grants from federal agencies, including the Environmental Protection Agency.

5. According to [usaspending.gov](https://www.usaspending.gov), LDEQ received millions of dollars in grants awarded by EPA from FY2018 through FY2023, and has substantial unexpired grant funds still available.¹ That information is consistent with my knowledge.

6. LDEQ intends to continue applying for grants from federal agencies in the future, including grants from EPA. LDEQ expects that it will continue to receive grants from EPA in every year for the foreseeable future.

THE COMPLAINTS AND LETTER OF CONCERN

7. I am informed and believe that EPA received a series of Title VI complaints in early-2022 from Concerned Citizens of St. John, Sierra Club, Stop the Wallace Grain Terminal, Inclusive Louisiana, RISE St. James, and the Louisiana Bucket Brigade. Consistent with that information, EPA's External Civil Rights docket reflects that EPA received complaint 01R-22-R6 on January 20, 2022, received complaint 02R-22-R6 on January 20, 2022, and received complaint 04R-22-R6 on February 2, 2022. LDEQ subsequently received a Letter of Concern from EPA in connection with those complaints on or about October 12, 2022.

INFORMAL RESOLUTION DISCUSSIONS

8. Informal resolution discussions began via a video and telephone conference on or about November 16, 2022.

9. During those discussions, EPA officials stated that compliance with environmental laws is not a shield to Title VI.

¹ <https://www.usaspending.gov/search/?hash=44fbf57e12d1bd12181d496824505a0d>

10. During those discussions, EPA asserted that LDEQ should undertake an analysis of the impact of LDEQ permitting decisions on purportedly disadvantaged populations such as racial minorities.

11. EPA also asserted that LDEQ should conduct “cumulative impact assessments” as part of LDEQ’s permitting process. In doing so, EPA made clear its position that undertaking cumulative impacts analysis was required to comply with Title VI.

12. At one point, EPA asserted that even though LDEQ had achieved an 85% reduction in chloroprene emissions from the Denka Performance Elastomers (DPE) facility in St. John the Baptist Parish through the negotiation of an agreement, an Administrative Order on Consent, with DPE —*i.e.*, a significant environmental benefit—EPA believed that LDEQ’s renewing that permit could result in a disparate impact that would violate Title VI. A true and correct copy of the Administrative Order on Consent that reduced a facility’s emissions of chloroprene by 85% was previously filed as Seidemann Declaration Exhibit 35 (Dkt. 12-35).

13. EPA official Lilian Dorka explained that EPA “would want to capture ... any permit” with its civil rights framework. For example, in a February 28, 2023, telephone conference, EPA rejected LDEQ’s suggestion to only apply EPA’s framework to permitting actions in the Industrial Corridor mentioned in EPA’s Letter of Concern, stating that such a limitation would “not meet the Title VI needs.” EPA instead stated that LDEQ should use EPA’s framework “without exception” including for “all renewals of all permits.” EPA confirmed that its expectation was for LDEQ to “commit to doing a disparate impact screening assessment for every renewal permit application for any major source or synthetic minor source across the state.” LDEQ noted that EPA’s demand “goes beyond ... resolving the concerns raised in the complaint[s] and ... some renewals don’t propose any changes at all.” EPA responded that “the issue is [if] there are already disparate impacts, then you keep renewing it without looking and trying to figure out how to try and reduce them.”

14. EPA asserted that Louisiana agencies should have “community meetings” to address a perceived lack of community involvement, and that the State’s speakers at those meetings should be subject to various “protocols.” EPA contemplated LDEQ hiring dedicated “risk communicators,” despite LDEQ informing EPA that LDEQ did not employ such persons.

15. EPA asserted that Louisiana agencies should adopt a scientific integrity policy, subject to EPA’s approval. EPA explained that it “want[s] to ensure that the studies that are being conducted ... follow a scientific integrity policy” satisfactory to EPA, and that the policy provide “a framework for every single study, every document that comes out that informs [the] public of the study information.”

16. LDEQ expended considerable resources in responding to EPA’s Title VI investigation and engaging in informal resolution discussions. I, along with General Counsel Jill Clark, participated in all or nearly all of the twice-weekly telephone conferences with EPA. Members of LDEQ’s executive staff, including two assistant secretaries, also participated in the majority of these calls. Other LDEQ employees, including attorneys and technical staff, spent considerable time reviewing EPA’s letter of concern, responding to the letter of concern, and evaluating the merits of EPA’s assertions throughout the course of EPA’s investigation and the associated informal resolution discussions. Suffice it to say, personnel time reflects an expenditure of State funds and further reflects a diversion of resources from tasks LDEQ would otherwise engage in, such as reviewing permit applications and enforcing environmental laws. Here, the diversion of resources was substantial. Responding to any future Title VI investigation would likely require similar significant expenditures of LDEQ resources.

COST TO LDEQ OF COMPLYING WITH EPA’S DEMANDS

17. LDEQ is the primary agency in Louisiana concerned with environmental protection and regulation. LDEQ administers various permitting programs, including those under the federal

Clean Air Act. LDEQ reviews and renders final decisions on hundreds of permit applications, including permit renewals, every year.

DISPARATE IMPACT ANALYSIS

18. Conducting a disparate-impact analysis requires expenditure of agency resources, including staff time. Performing that analysis requires LDEQ to collect and review information regarding the race, color, and national origin, of communities around any site that is the subject of a permit application or permit renewal. Collecting and reviewing that information additionally causes LDEQ to incur costs related to determining what additional data it needs, how to obtain that data, collecting that data in accordance with federal and state laws, and monitoring the data to ensure compliance with EPA's demands.

19. Conducting a disparate-impact analysis also requires LDEQ to collect and review information regarding the race, color, and national origin of communities to be used as a comparator for the site that is the subject of a permit action. Collecting and reviewing that information causes LDEQ to incur costs related to determining what additional data it needs, how to obtain that data, collecting that data in accord with federal and state laws, and monitoring the data to ensure compliance with EPA's demands.

20. LDEQ has conducted racial demographic-based analyses in the past and will be required to do so in the future for as long as Defendants continue to maintain regulations that impose disparate-impact mandates. In each instance where LDEQ has performed this analysis, it has incurred costs, including use of staff time and resources like computers to assist with the required statistical analysis. LDEQ expects that disparate-impact analysis will continue not to be costless in the future and is not aware of any reason that it would ever fail to consume some resources.

21. Many or all of these costs would not be incurred if LDEQ were no longer subject to federal disparate-impact-based mandates.

22. On the other hand, costs to LDEQ would increase if LDEQ is required to perform additional disparate impact analyses on, e.g., permit renewals.

CUMULATIVE IMPACT

23. Complying with EPA's proposed cumulative impacts framework would require LDEQ to collect and review information about environmental impacts outside of the permit application or renewal, including information regarding the race, color, and national origin, of communities around any site that is the subject of a permit application or permit renewal. Further, and as LDEQ has informed EPA, much of the information required by EPA's cumulative impacts framework falls outside the scope of LDEQ's jurisdiction and would likely require the cooperation of a number of other state and local government entities. Collecting and reviewing that information would cause LDEQ to incur costs related to determining what additional data it needs, how to obtain that data, collecting that data in accord with federal and state laws, and monitoring the data to ensure compliance with EPA's demands.

24. Complying with EPA's cumulative impacts framework would require LDEQ to collect and review information about an apparently open-ended set of health and socioeconomic concerns, including information regarding the race, color, and national origin, of affected communities. Collecting and reviewing that information would cause LDEQ to incur costs related to determining what additional data it needs, how to obtain that data, collecting that data in accord with federal and state laws, and monitoring the data to ensure compliance with EPA's demands.

RELATED DEMANDS

25. Complying with EPA's demands for public meetings, dedicated "risk communicators," and a restrictive "scientific integrity policy" would cause LDEQ to incur costs to host meetings and hire additional employees. And restricting LDEQ's communication with the public would hinder or prevent LDEQ officials from providing Louisiana citizens with information that

LDEQ believes should be provided to those citizens, particularly on issues that are subject to scientific dispute.

MISCELLANEOUS

26. A true and accurate copy of an EPA "Request for Information" received by LDEQ, together with the cover email, were previously filed as Seidemann Declaration Exhibit 18 (Dkt. 12-18).

27. Attached as Composite Exhibit 81 is a true and accurate copy of an email and attached redline of portions of a draft informal resolution agreement, as emailed to EPA on March 22, 2023.

28. Attached as Composite Exhibit 82 is a true and accurate copy of an email and attached redline of a draft informal resolution agreement, as received from EPA on May 18, 2023.

29. Attached as Composite Exhibit 83 is a true and accurate copy of an email and LDEQ's attached last redline of a section of a draft informal resolution agreement, as emailed to EPA on June 9, 2023.

30. Attached as Exhibit 84 is a true and accurate copy of an EPA Objection letter received by LDEQ.

31. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. § 1746.

Sworn and subscribed this 29th day of September, 2023, in Baton Rouge, Louisiana

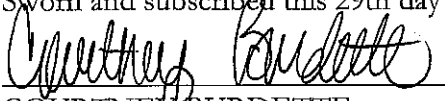

COURTNEY BURDETTE

Exhibit 81

St. John, Joseph

From: Courtney Burdette <Courtney.Burdette@LA.GOV>
Sent: Wednesday, March 22, 2023 5:59 PM
To: Dorka, Lilian; David McCay; Seidemann, Ryan; Stephen Russo
Cc: Hoang, Anhthu; Khan, Zahra; Isales, Daniel; Scott, Ronald; Moncrieffe, Marcia; O'Lone, Mary; Andrews, Suzanne; Montegut, Ryan; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com; Jones, Jasimiel; Celena Cage; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Payne, James (Jim); Chaudhary, Dimple; McGuire, James; Roger Ward (DEQ)
Subject: Re: Agenda for Thursday, 3/16 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,
Attachments: CIA LDEQ draft 3.22.23.docx; II E through H Redline 3.22.23_01.docx

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

All,

Please find attached LDEQ's redline to draft to II E through H and LDEQ's proposed language for the cumulative impacts analysis section.

Thanks,
Courtney

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Monday, March 20, 2023 10:07:39 AM
To: Courtney Burdette; David McCay; Seidemann, Ryan; Stephen Russo
Cc: Hoang, Anhthu; Khan, Zahra; Isales, Daniel; Scott, Ronald; Moncrieffe, Marcia; O'Lone, Mary; Andrews, Suzanne; Montegut, Ryan; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com; Jones, Jasimiel; Celena Cage; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Payne, James (Jim); Chaudhary, Dimple; McGuire, James
Subject: RE: Agenda for Thursday, 3/16 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hello Everyone,

As we have not received the last set of redlines yet for either LDH or LDEQ, we will need to cancel today's meeting, so I will send that out shortly. Note please that we are expecting the redlines for the remainder of the LDH and LDEQ draft IRA sections by no later than COB Wednesday, so that we can engage on Thursday. Please let me know if you have any questions.

Lilian

Lilian Sotolongo Dorka
Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency
202-564-9649 - Office

202-695-9888 – Cell
Pronouns: she/her/ella
Hablo español

From: Courtney Burdette <Courtney.Burdette@LA.GOV>
Sent: Friday, March 17, 2023 4:36 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; David McCay <David.McCay@LA.GOV>; Seidemann, Ryan <SeidemannR@ag.louisiana.gov>; Stephen Russo <Stephen.Russo@LA.GOV>
Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Isales, Daniel <Isales.Daniel@epa.gov>; Scott, Ronald <Scott.Ronald@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Andrews, Suzanne <Andrews.Suzanne@epa.gov>; Montegut, Ryan <MontegutR@ag.louisiana.gov>; Neal Elliott <Neal.Elliott@LA.GOV>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Bliss Higgins <Bliss.Higgins@la.gov>; St. John, Joseph <StJohnJ@ag.louisiana.gov>; Tim.Hardy@bswllp.com; Jones, Jasimiel <JonesJ@ag.louisiana.gov>; Celena Cage <celena.cage@la.gov>; jill.clark@la.gov; Brungard, Morgan <BrungardM@ag.louisiana.gov>; Freel, Angelique <FreelA@ag.louisiana.gov>; John B. King <John.King@bswllp.com>; Carroll Devillier <Carroll.Devillier@bswllp.com>; Danielle L. Borel <Danielle.Borel@bswllp.com>; Payne, James (Jim) <payne.james@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; McGuire, James <McGuire.James@epa.gov>
Subject: Re: Agenda for Thursday, 3/16 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

All,

LDEQ is addressing comments and feedback from LADOJ regarding the remaining redlines. As such, we are unable to circulate a redline draft to the larger group today. We are working to have a redline to share with EPA early next week. Your cooperation is appreciated as we continue to devote significant time and attention to this matter.

Thank you,

Courtney Burdette

From: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>
Sent: Thursday, March 16, 2023 1:16 PM
To: David McCay; Seidemann, Ryan; Stephen Russo
Cc: Hoang, Anhthu; Khan, Zahra; Isales, Daniel; Scott, Ronald; Moncrieffe, Marcia; O'Lone, Mary; Andrews, Suzanne; Montegut, Ryan; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel; Celena Cage; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Payne, James (Jim); Chaudhary, Dimple; McGuire, James; Courtney Burdette
Subject: FW: Agenda for Thursday, 3/16 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hello Colleagues,

Thank you to David for sending the attached LDH Draft IRA redline this morning. We have not had an opportunity to review the redline but think it would be helpful for LDH to walk us through its redline comments and suggested edits to ensure we understand as we review and respond.

We continue to move forward on a very tight time frame and appreciate your efforts and cooperation as we resolve these complaints. Thank you! Lilian

AGENDA for Meeting on 3/16/2023

- I. Introductions/Announcements
- II. Walkthrough by LDH of New Draft Redline
- III. Next Steps
- IV. Questions

Lilian Sotolongo Dorka

Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency

202-564-9649 - Office

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Pronouns: she/her/ella

Hablo español

From: Dorka, Lilian

Sent: Tuesday, March 14, 2023 12:50 PM

To: David McCay <David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Courtney Burdette
<Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>; Seidemann, Ryan
<SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; Stephen Russo
<Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>

Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Khan, Zahra
<Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Isales, Daniel
<Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald
<Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia
<Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary
<olone.mary@epa.gov<mailto:olone.mary@epa.gov>>; Andrews, Suzanne
<Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan
<MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; Neal Elliott
<Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth
<MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins
<Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph
<StJohnJ@ag.louisiana.gov<mailto:StJohnJ@ag.louisiana.gov>>;

Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel
<JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage
<celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan
<BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique
<FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King
<John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier
<Carroll.Devillier@bswllp.com<mailto:Carroll.Devillier@bswllp.com>>; Danielle L. Borel
<Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim)
<payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple
<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>

Subject: RE: Agenda for Tuesday, 3/14 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

Thanks everyone! I will go ahead and cancel the meeting. Lilian

Lilian Sotolongo Dorka

Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/ella
Hablo español

From: David McCay <David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>
Sent: Tuesday, March 14, 2023 10:16 AM
To: Courtney Burdette <Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>; Dorka, Lilian
<Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>; Seidemann, Ryan
<SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; Stephen Russo
<Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>
Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Khan, Zahra
<Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Isales, Daniel
<Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald
<Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia
<Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary
<OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne
<Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan
<MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; Neal Elliott
<Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth
<MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins
<Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph
<StJohnJ@ag.louisiana.gov<mailto:StJohnJ@ag.louisiana.gov>>;
Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel
<JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage
<celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan
<BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique
<FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King
<John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier
<Carroll.Devillier@bswllp.com<mailto:Carroll.Devillier@bswllp.com>>; Danielle L. Borel
<Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim)
<payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple
<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: Agenda for Tuesday, 3/14 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

LDH also does not have any agenda items for today, so we likewise agree with canceling today's meeting.

David L. McCay (LSBA No. 23527)
Staff Attorney
Louisiana Department of Health
Bureau of Legal Services
P.O. Box 3836
Baton Rouge, LA 70821-3836
Physical Address:
628 N. 4th Street (Bienville Building)
Room 865
Baton Rouge, LA 70802
(225) 342-1123 direct line

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david.mccay@la.gov<mailto:david.mccay@la.gov>

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From: Courtney Burdette <Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Sent: Tuesday, March 14, 2023 8:22 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>; Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; Stephen Russo <Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>
Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Isales, Daniel <Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald <Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary <OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne <Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan <MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; David McCay <David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Neal Elliott <Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins <Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph <StJohnJ@ag.louisiana.gov<mailto:StJohnJ@ag.louisiana.gov>>; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel <JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage <Celena.Cage@LA.GOV<mailto:Celena.Cage@LA.GOV>>; Jill Clark <Jill.Clark@la.gov<mailto:Jill.Clark@la.gov>>; Brungard, Morgan <BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique <FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King <John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier <Carroll.Devillier@bswllp.com<mailto:Carroll.Devillier@bswllp.com>>; Danielle L. Borel <Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim) <payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James <McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: Re: Agenda for Tuesday, 3/14 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

Lilian,

LDEQ also does not have any agenda items for today. so we agree with canceling the meeting.

Thanks,
Courtney

From: Dorka, Lilian <Dorka.Lilian@epa.govmailto:Dorka.Lilian@epa.gov>
Sent: Monday, March 13, 2023 7:10:37 PM
To: Seidemann, Ryan; Stephen Russo; Courtney Burdette
Cc: Hoang, Anhthu; Khan, Zahra; Isales, Daniel; Scott, Ronald; Moncrieffe, Marcia; O'Lone, Mary; Andrews, Suzanne; Montegut, Ryan; David McCay; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel; Celena Cage; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Payne, James (Jim); Chaudhary, Dimple; McGuire, James
Subject: Agenda for Tuesday, 3/14 IRA Meeting for Complaint Nos. 01R-22 R6 and 02R-22-R6,

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hello Everyone,

EPA does not have any agenda items for tomorrow. Unless the LA agencies have any items for the agenda or questions, etc., we will cancel tomorrow's meeting. Please let me know by noon tomorrow, Tuesday, if anyone has any agenda items. Thanks! Lilian

Lilian Sotolongo Dorka
Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency
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From: Khan, Zahra <Khan.Zahra@epa.govmailto:Khan.Zahra@epa.gov>
Sent: Thursday, March 9, 2023 12:59 PM
To: Dorka, Lilian <Dorka.Lilian@epa.govmailto:Dorka.Lilian@epa.gov>; Seidemann, Ryan <SeidemannR@ag.louisiana.govmailto:SeidemannR@ag.louisiana.gov>; Stephen Russo <Stephen.Russo@LA.GOVmailto:Stephen.Russo@LA.GOV>; Courtney Burdette <Courtney.Burdette@LA.GOVmailto:Courtney.Burdette@LA.GOV>
Cc: Hoang, Anhthu <Hoang.Anhthu@epa.govmailto:Hoang.Anhthu@epa.gov>; Isales, Daniel <Isales.Daniel@epa.govmailto:Isales.Daniel@epa.gov>; Scott, Ronald <Scott.Ronald@epa.govmailto:Scott.Ronald@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.govmailto:Moncrieffe.Marcia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.govmailto:OLone.Mary@epa.gov>; Andrews, Suzanne <Andrews.Suzanne@epa.govmailto:Andrews.Suzanne@epa.gov>; Montegut, Ryan <MontegutR@ag.louisiana.govmailto:MontegutR@ag.louisiana.gov>; David McCay <David.McCay@LA.GOVmailto:David.McCay@LA.GOV>; Neal Elliott <Neal.Elliott@LA.GOVmailto:Neal.Elliott@LA.GOV>; Murrill, Elizabeth <MurrillE@ag.louisiana.govmailto:MurrillE@ag.louisiana.gov>; Bliss Higgins <Bliss.Higgins@la.govmailto:Bliss.Higgins@la.gov>; St. John, Joseph <StJohnJ@ag.louisiana.govmailto:StJohnJ@ag.louisiana.gov>; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel <JonesJ@ag.louisiana.govmailto:JonesJ@ag.louisiana.gov>; Celena Cage <celena.cage@la.govmailto:celena.cage@la.gov>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan <BrungardM@ag.louisiana.govmailto:BrungardM@ag.louisiana.gov>; Freel, Angelique

<FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King
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<Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim)
<payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple
<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-R6,

Good afternoon, all:

Sending today's Agenda below.

AGENDA for Meeting on 3/9/2023

I. Introductions/Announcements

- * Finalizing Resolution Extension Agreement
- * Status of Formosa Litigation

II. Permit Reopening Process

III. Next Steps

- * Remaining Redline Deliverables LDH and LDEQ
- * Revised Clean Versions from EPA to State

IV. Questions

Looking forward to speaking with you. Thank you!

Zahra

From: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>
Sent: Wednesday, March 8, 2023 4:52 PM
To: Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; Stephen Russo
<Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>; Courtney Burdette
<Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Cc: Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Hoang, Anhthu
<Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Isales, Daniel
<Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald
<Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia
<Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary
<OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne
<Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan
<MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; David McCay
<David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Neal Elliott
<Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth
<MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins
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Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel
<JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage
<celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan

<BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique
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<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-R6,

Thanks Ryan!

Lilian Sotolongo Dorka
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From: Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>
Sent: Wednesday, March 8, 2023 4:43 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>; Stephen Russo
<Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>; Courtney Burdette
<Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Cc: Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Hoang, Anhthu
<Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Isales, Daniel
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<David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Neal Elliott
<Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth
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Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel
<JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage
<celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan
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<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-R6,

I definitely understand and just wanted to give you notice once my network came back online. I will check with the LDOJ folks about a deadline.

From: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>
Sent: Wednesday, March 08, 2023 3:17 PM
To: Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; Stephen Russo <Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>; Courtney Burdette <Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Cc: Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Isales, Daniel <Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald <Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary <OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne <Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan <MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; David McCay <David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Neal Elliott <Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins <Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph <StJohnJ@ag.louisiana.gov<mailto:StJohnJ@ag.louisiana.gov>>; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel <JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage <celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan <BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique <FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King <John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier <Carroll.Devillier@bswllp.com<mailto:Carroll.Devillier@bswllp.com>>; Danielle L. Borel <Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim) <payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James <McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-R6,

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks Ryan. Can you share the Cumulative Impacts section redline by COB Monday? Note that we do not yet have a fully executed extension agreement, and even when we do, we will still have tight timeframes here. Lilian

Lilian Sotolongo Dorka
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Hablo español

From: Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>
Sent: Wednesday, March 8, 2023 4:06 PM

To: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>; Stephen Russo <Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>; Courtney Burdette <Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Cc: Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Isales, Daniel <Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald <Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; O'Lone, Mary <OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne <Andrews.Suzanne@epa.gov<mailto:Andrews.Suzanne@epa.gov>>; Montegut, Ryan <MontegutR@ag.louisiana.gov<mailto:MontegutR@ag.louisiana.gov>>; David McCay <David.McCay@LA.GOV<mailto:David.McCay@LA.GOV>>; Neal Elliott <Neal.Elliott@LA.GOV<mailto:Neal.Elliott@LA.GOV>>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov<mailto:MurrillE@ag.louisiana.gov>>; Bliss Higgins <Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph <StJohnJ@ag.louisiana.gov<mailto:StJohnJ@ag.louisiana.gov>>; Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel <JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage <celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan <BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique <FreelA@ag.louisiana.gov<mailto:FreelA@ag.louisiana.gov>>; John B. King <John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier <Carroll.Devillier@bswllp.com<mailto:Carroll.Devillier@bswllp.com>>; Danielle L. Borel <Danielle.Borel@bswllp.com<mailto:Danielle.Borel@bswllp.com>>; Payne, James (Jim) <payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James <McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: RE: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-R6,

All:

This comes at a particularly good time in light of my next statement. We are aware that DEQ had promised to have the cumulative impacts portion redline back to EPA by tomorrow. However, due to three appellate deadlines this week (two argument and one brief) and a network outage that just now came back online, LDOJ is not going to be able to have its review of DEQ's version complete by tomorrow. We will endeavor to get it to EPA as soon as possible.

Thanks,

Ryan

From: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>
Sent: Wednesday, March 08, 2023 2:29 PM
To: Stephen Russo <Stephen.Russo@LA.GOV<mailto:Stephen.Russo@LA.GOV>>; Courtney Burdette <Courtney.Burdette@LA.GOV<mailto:Courtney.Burdette@LA.GOV>>
Cc: Khan, Zahra <Khan.Zahra@epa.gov<mailto:Khan.Zahra@epa.gov>>; Hoang, Anhthu <Hoang.Anhthu@epa.gov<mailto:Hoang.Anhthu@epa.gov>>; Isales, Daniel <Isales.Daniel@epa.gov<mailto:Isales.Daniel@epa.gov>>; Scott, Ronald <Scott.Ronald@epa.gov<mailto:Scott.Ronald@epa.gov>>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov<mailto:Moncrieffe.Marcia@epa.gov>>; Seidemann, Ryan <SeidemannR@ag.louisiana.gov<mailto:SeidemannR@ag.louisiana.gov>>; O'Lone, Mary <OLone.Mary@epa.gov<mailto:OLone.Mary@epa.gov>>; Andrews, Suzanne

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<Bliss.Higgins@la.gov<mailto:Bliss.Higgins@la.gov>>; St. John, Joseph
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Tim.Hardy@bswllp.com<mailto:Tim.Hardy@bswllp.com>; Jones, Jasimiel
<JonesJ@ag.louisiana.gov<mailto:JonesJ@ag.louisiana.gov>>; Celena Cage
<celena.cage@la.gov<mailto:celena.cage@la.gov>>; jill.clark@la.gov<mailto:jill.clark@la.gov>; Brungard, Morgan
<BrungardM@ag.louisiana.gov<mailto:BrungardM@ag.louisiana.gov>>; Freel, Angelique
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<John.King@bswllp.com<mailto:John.King@bswllp.com>>; Carroll Devillier
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<payne.james@epa.gov<mailto:payne.james@epa.gov>>; Chaudhary, Dimple
<Chaudhary.Dimple@epa.gov<mailto:Chaudhary.Dimple@epa.gov>>; McGuire, James
<McGuire.James@epa.gov<mailto:McGuire.James@epa.gov>>
Subject: ATTN: Courtney Burdette and Stephen Russo - Extension Agreement for Complaint Nos. 01R-22 R6 and 02R-22-
R6,
Importance: High

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Good afternoon, Courtney and Stephen,

As I mentioned during our meeting last Thursday, we have been discussing with the Sierra Club Complainant an agreement to extend the timeframe for resolution of Complaint Nos. 01R-22 R6 and 02R-22-R6. We believe our work so far to reach informal resolution agreements between EPA and LDEQ and EPA and LDH has been very productive, and we look forward to continuing this important and productive work with LDEQ and LDH.

Attached, please find a signed copy of an agreement with the Complainant to extend the timeframe for resolution of Complaint Nos. 01R-22 R6 and 02R-22-R6. Also attached is the Agreement that I have signed. Finally, please find corresponding Agreements for LDEQ and LDH, for your review and signature. We would like to have all Agreements signed and in place by COB Thursday, March 9th. Please let me know as soon as possible if you have any questions. Thanks in advance for your help!

Lilian

Lilian Sotolongo Dorka
Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency
202-564-9649 - Office
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Pronouns: she/her/ella
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EACH PROVISION OF THIS DOCUMENT MUST BE ACCOMPANIED BY SPECIFIC REGULATORY OR STATUTORY CITATIONS TO THE AUTHORITY FOR THE PROVISION.

B. Industrial Corridor Impacts Assessment

1. Industrial Corridor Screening Assessment. Separate from and as a corollary to the individual air permit application screening assessments performed under Section II.A of this agreement, LDEQ will conduct a screening assessment for each parish within the Industrial Corridor with respect to existing conditions to identify communities¹ potentially at risk of disproportionate adverse impacts².
 - a. The assessment will include characterizing communities with respect to the factors considered in the permit application screening process at the time the Corridor-wide assessment is conducted (e.g., EJ Screen indicators).
 - b. The assessment may include an assessment of communities utilizing EPA's EJ SCREEN, the Agency of Toxic Substances and Disease Registry's EJ Index, the Council on Environmental Quality's Climate and Economic Justice Screening Tool, or other available tools.
 - c. The assessment may include a review of emission trends, modeling and monitoring results conducted within the Industrial Corridor.
 - d. LDEQ may consult with LDH in conducting the assessment.
 - e. LDEQ will prepare a report describing the methodologies and data utilized in the Industrial Corridor screening assessment and providing tabular and visually mapped identification of communities identified as potentially at risk. LDEQ will make the results of the screening assessment available for public review and comment prior to finalizing the assessment.
2. Assessment of Mitigation Measures. After completion of the Industrial Corridor Screening Assessment, LDEQ will work to identify actions to manage, reduce, minimize or avoid any disproportionate adverse impacts identified through the Industrial Corridor Screening Assessment that are within LDEQ's constitutional and statutory jurisdiction. LDEQ will develop methods of program administration within LDEQ's constitutional and statutory authority to implement actions identified, which may include rulemaking in accordance with the Administrative Procedures Act.

¹ It is anticipated that the assessments will be performed on a census tract basis as an approximation of a "community," as most relevant data sources provide information on a census tract basis. At LDEQ's discretion, and as reasonably feasible, information may be compiled and assessed on a larger or smaller scale to delineate a community.

² The term "disproportionate adverse impact" refers to a localized impact that exceeds a health-based environmental standard and falls disproportionately on a protected class under Title VI of the Civil Rights Act.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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02/23/2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT
between the
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA COMPLAINTS NO. 01R-22-R6 AND 04R-22-R6

II. Commitments Regarding LDEQ's Methods of Administration (Issue 1)

Commented [A1]: LDEQ must verify its statutory and regulatory authority for each of these commitments prior to finalization of an IRA

E. Community-Based Ambient Air Emissions Monitoring

- a. For facilities that currently or propose to emit EtO or chloroprene, LDEQ will incorporate into new permits or permit renewals a three-year fenceline monitoring requirement for those pollutants. Pursuant to EPA Grant No. XXX, LDEQ will install and operate a Temporary Located Community (TLC) monitoring station on the West Bank in St. James Parish, with an anticipated monitoring period of ~March 2024 through February 2026. Anticipated monitoring parameters include NO₂, PM_{2.5}, H₂S, SO₂, Methane/NMOC, THC, and VOC, including HAP and ozone precursors as listed in the project scope. LDEQ will seek to extend the total monitoring period for this TLC for an additional two years through grant funding, permitting, or enforcement activities.
- a-b. LDEQ will seek EPA grant opportunities, BEP/SEP funding opportunities or other available funding to locate additional TLC monitoring stations near communities identified through the Industrial Corridor Screening Assessment as potentially at risk of disproportionate adverse air impacts¹ in areas where ambient air monitoring currently does not exist.
- b-c. LDEQ will continue the Mobile Air Monitoring Lab (MAML) ambient monitoring program, and will conduct at least three monitoring events in the Industrial Corridor each year for the next three fiscal years (July 1, 2023 through June 30, 2026).

Commented [A2]: LDEQ does not agree to the EtO and chloroprene fenceline monitoring IRA provision for the following reasons:

- LDEQ prefers community-based monitoring to provide more representative data of community impacts, as opposed to fenceline monitoring.
- Denka has had multiple networks of fenceline monitoring for chloroprene for 7 years or more already. There are no other chloroprene emitting facilities in the state.
- FG LA permits already require fenceline monitoring.
- The need for fenceline monitoring of EtO at existing facilities should be considered and required by EPA if appropriate in the HON Residual Risk rulemaking to be proposed in March. LDEQ would incorporate any such final and effective applicable requirements for EtO fenceline monitoring in the facilities' Title V permits in accordance with permitting regulations.
- This IRA is not the appropriate vehicle for imposing fenceline monitoring on a sector-wide basis, as such an approach would require rulemaking.

¹ The term "disproportionate adverse air impact" refers to a localized air quality impact that exceeds a health-based environmental standard and falls disproportionately on a protected class under Title VI of the Civil Rights Act.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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F. Actions ~~to~~ Related to ~~Denka Emissions~~ Title V Renewal Applications

- ~~a. LDEQ agrees to publish for comment the revised draft permit(s) for the Denka facility that incorporates any new management practices that result from resolution of any EPA and/or LDEQ enforcement actions w/in 60 days of the resolution of those enforcement actions.~~
- ~~b. LDEQ agrees to publish for comment the revised draft permit(s) for the Denka facility that incorporates the successful Emission Reduction Project that results from EPA's enforcement action, Docket No. RCRA-06-2023-0906, w/in 60 days of the resolution of that enforcement action.~~
- a. Within 60 days of the effective date of this Agreement, LDEQ will issue the Denka draft proposed Title V renewal permits for public comment for the Denka Chloroprene Unit, Neoprene Unit and HCl Recovery Unit within 180 days of the later of the following: final court decision(s) related to the pending USDOJ ISE complaint and Denka lawsuit regarding the USEPA chloroprene Inhalation Unit Risk Factor, including any subsequent appeals; final and effective 40 CFR Part 63 regulations to revise the Group 1 Polymers and Resins NESHAP and Hazardous Organic NESHAP to incorporate a current residual risk and technology review.
- b. The proposed renewal permits will incorporate the following permit revisions:
 - i. Emission limits for chloroprene based on the controls and emission reduction projects implemented under the 2017 LDEQ Administrative Order on Consent (AOC);
 - ii. Any additional emission reductions achieved by Denka since implementation of the 2017 AOC;
 - iii. Compliance assurance measures, which may include emissions testing, emissions and/or operating parameter monitoring, recordkeeping and reporting to demonstrate ongoing compliance with chloroprene emission limits;
 - iv. Any planned or ongoing emission reduction projects or changes to work practice standards required by final and effective enforcement actions or agreed to under any settlement or administrative order, with the associated compliance schedule;
 - v. All federally applicable requirements (as defined at LAC 33.III.502), including applicable technology-based emission limitations, work practice standards, and monitoring requirements;
 - ±vi. Any final and effective revisions to any federally applicable requirements, with future compliance dates.

Commented [A3]: LDEQ and LADOJ would like to discuss with EPA the implications of singling out this single entity in the IRA.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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- c. LDEQ's public notice and comment process on the Denka permits will follow LDEQ's public participation requirements under the EPA-approved Title V program and will meet any applicable procedural requirements under the Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to Paragraphs XXX below.
- d. Within 30 days of the resolution of any LDEQ or LDEQ/EPA enforcement actions at the Denka facility (e.g., Consent Agreement and Final Order), LDEQ will provide information to the public on the terms of the resolution of the enforcement action and the schedule for any permit actions LDEQ will undertake to incorporate any requirements into the relevant permits;

G. Actions Regarding Other Facilities in the Industrial Corridor

- a. LDEQ will work to limit air emissions of carcinogens including chloroprene and ethylene oxide (EtO) which have a mutagenic mode of action. The goal will be to limit future air emissions of those pollutants to levels that result in a carcinogenic risk level below that defined in guidance or standards for LDEQ (e.g., below 1 in 1,000,000 risk) based on existing EPA IURs. This may warrant reducing emissions to the maximum achievable levels without consideration of costs;
- b. To implement in part the general commitment in Paragraph E. 1 above, LDEQ will develop a process to update LDEQ's current Ambient Air Standards (AAS); regularly update the standards; and to add chronic standards beginning with mercury and hydrogen sulfide. When considering data for both acute and chronic standards, LDEQ will use the best available data (i.e., for chronic standards utilize U.S. EPA Reference Concentrations (RfCs) or Inhalation Unit Risks (IURs)). Within 180 days of the effective date of this Agreement, LDEQ will provide EPA confirmation of the adoption of this process;
- c. Within XX days of the effective date of this Agreement, LDEQ will conduct HEMS modelling of EtO and chloroprene emissions from facilities in St. James and St. John the Baptist Parishes;
- d. Within 90 days of completing the HEMS modelling in Paragraph E. 3 above, LDEQ will provide a risk communication presentation about the results of the HEMS modelling to residents and Parish government agencies including school boards;

H.G. Public Engagement

- a. LDEQ will include in Title V permit file copies of all written communications and notes of meetings or other oral communication with permit applicants and other outside parties regarding permit applications that are releasable under Louisiana Open Records law (e.g., applicant's comments on draft permit monitoring terms and conditions, emissions limitations);

Commented [A4]: Enforcement actions typically include a deadline for the respondent to submit a permit application to incorporate requirements from the enforcement action. The actions are public noticed prior to finalizing, and are made available to the public (uploaded to EDMS) after issuance.

Commented [A5]: Propose this entire section be deleted. Other facilities should be addressed through permit applications, corridor-wide review, and EPA rulemaking.

Commented [A6]: • LDEQ has worked diligently to reduce emissions of toxic air pollutants since 1989. Emissions of Class I and II TAP have been reduced ~70% statewide over the last 30 years, including in the Industrial Corridor.
• EPA currently estimates a US inhalation cancer risk of close to 30 in 1,000,000.

Commented [A7]: • LDEQ's Air Toxics Program is a state program, adopted and implemented under state authority. It is not a SIP program subject to EPA oversight. LDEQ will not render the program subject to EPA oversight through the IRA.
• LDEQ AAS are adopted by rule in accordance with the Administrative Procedures Act. LDEQ cannot and will not presume the outcome of any rulemaking.
• If undertaking any rulemaking to revise or add new AAS, LDEQ would rely on the best available data at the time of the rulemaking.

Commented [A8]: LDEQ will not agree to HEM4 modeling of ethylene oxide and chloroprene emissions.
• EJSscreen incorporates the results of AirToxScreen, which in turn utilizes HAPTEM, not HEM, to estimate exposure and risk.
• EPA has (presumably) modeled estimated risks for ethylene oxide and chloroprene emitting facilities, including those in St. James and St. John the Baptist, in conducting the residual risk reviews required under the CAA. These rule revisions, with results of the risk estimates, are to be proposed in March 2023.
• EPA IURs for both ethylene oxide and chloroprene are currently subject to court challenge.

Commented [A9]: Propose this entire section be eliminated. Public engagement has been addressed in other sections of the draft IRA.

Commented [A10]: It is already LDEQ's practice to include all meeting records and written communication in the EDMS file for the regulated facility.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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- b. ~~LDEQ will post relevant Title V permit files on its website at least 45 days before a draft Title V permit is published for comment.~~
- e. ~~LDEQ will notify the public via LDEQ's website when it receives a minor source permit application for which LDEQ regulations do not require public notice and comment.~~
- d. ~~Within 180 days, LDEQ will develop and implement a policy to provide public notice and comment for all minor source permit applications.~~
- e. ~~LDEQ's public notice and comment and public hearing on draft Title V and minor source permits will follow LDEQ's Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to Paragraphs XXX below.~~
- a. ~~LDEQ will engage in public participation and outreach as outlined in Section~~

Commented [A11]: This is not a reasonable timeframe. However, a list of all permit applications received by the Department is maintained on LDEQ's website per the statutory requirement in La. R.S. 30:2022.1, and any interested person may request to receive monthly email notifications from the Department regarding applications received.

Commented [A12]: As noted in our response, we already have a spreadsheet on our website of all applications received and pending which includes minor source applications. We don't need to agree to anything further on this.

Commented [A13]: No, we will not agree to this.

Commented [A14]: We already have regulations and protocols for public notice and comment and public hearings. We will not agree to change those as part of this IRA, except to the extent we may be missing a required procedural element under Part III below.

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Commented [A15]: Can refer to other sections of the IRA concerning public engagement

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Exhibit 82

St. John, Joseph

From: Dorka, Lilian (she/her/hers) <Dorka.Lilian@epa.gov>
Sent: Thursday, May 18, 2023 8:53 PM
To: Courtney Burdette; Bliss Higgins
Cc: Payne, James (Jim); Scott, Ronald; Isales, Daniel; Khan, Zahra; Hoang, Anhthu; O'Lone, Mary; Rhodes, Julia (she/her/hers); McGuire, James; Payne, James (Jim); Stephen Russo; Seidemann, Ryan; McKinney, Cheryl; Moncrieffe, Marcia; Bates, Warren; Montegut, Ryan; David McCay; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com; Jones, Jasimiel; Celena Cage; Andrews, Suzanne; jill.clark@la.gov; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Schoellkopf, Lynde (she/her/hers); Payne, James (Jim); Chaudhary, Dimple
Subject: [WARNING: UNSCANNABLE EXTRACTION FAILED]RE: Revised/Updated EPA Draft IRA for LDEQ: EPA Complaint Nos. 01R-22 R6, 02R-22-R6, and 04R-22-R6
Attachments: 2023.05.18 draft 2 IRA 01R-22-R6 and 04R-22-R6 to LDEQ.docx
Importance: High

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Hello Courtney,

Attached, please find EPA's updated/revised Informal Resolution Agreement for LDEQ. We would appreciate your comments no later than June 2, 2023. Thanks, and please let us know if you have any questions.

Best regards,

Lilian

Lilian Sotolongo Dorka
Deputy Assistant Administrator for External Civil Rights
Office of Environmental Justice and External Civil Rights
U.S. Environmental Protection Agency
202-564-9649 - Office
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Hablo español

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Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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05/18/2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT
between the
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA COMPLAINTS NO. 01R-22-R6 AND 04R-22-R6

I. PURPOSE AND JURISDICTION

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI) and other federal nondiscrimination laws, and United States Environmental Protection Agency's (EPA) implementing regulations at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation or retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance.¹

B. The Louisiana Department of Environmental Quality (LDEQ) receives federal financial assistance from the EPA and, therefore, must ensure nondiscrimination in all of its operations pursuant to federal nondiscrimination laws and EPA's implementing regulations.

C. On January 20, 2022, EPA received Complaint No. 01R-22-R6, which alleged discrimination by LDEQ based on race. In response to the complaint, on April 6, 2022, EPA accepted for investigation the following issues:

¹ Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Act Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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1. Whether LDEQ uses criteria or methods of administering its air pollution control program that have the intent and/or effect of subjecting persons to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 § § 7.30 and 7.35, including, but not limited and with respect to, LDEQ's acts or failures to undertake certain actions related to the Denka facility in connection with its air pollutant emissions, and the predominantly Black residents of St. John the Baptist Parish.

2. Whether LDEQ has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to LDEQ services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the LDEQ has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

D. On February 2, 2022, EPA received Complaint No. 04R-22-R6, which alleged discrimination by LDEQ based on race. In response to the complaint, on April 6, 2022, EPA accepted for investigation the following issues:

1. Whether LDEQ uses criteria or methods of administering its air pollution control program that have the intent and/or effect of subjecting persons to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 § § 7.30 and 7.35, including, but not limited and with respect to, LDEQ's decision to reaffirm issuance of 14 new air permits for the Formosa facility, and the predominantly Black residents of St. James Parish.

2. Whether LDEQ has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to LDEQ services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the LDEQ has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

E. During EPA's investigation into Complaint Nos. 01R-22-R6 and 04R-22-R6, LDEQ agreed to engage in the voluntary Informal Resolution Agreement (Agreement) process in order to resolve the complaints.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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F. On October 12, 2022, EPA issued a Letter of Concern (Letter) to LDEQ² to convey the results of EPA's initial fact finding and analysis of the civil rights issues EPA accepted for investigation in Complaint No. 01R-22-R6 (LDEQ Denka Complaint) and Complaint No. 04R-22-R6 (LDEQ Formosa Complaint). The Letter addresses LDEQ's implementation of its air pollution control permit program and raised concerns that LDEQ's methods of administering its programs and activities and actions or inactions related to air pollution control and health risk mitigation and communication may have resulted and continue to result in disparate adverse impacts on Black residents: (1) living and attending school near the Denka Performance Elastomer LLC (Denka) facility in St. John the Baptist Parish, LaPlace, Louisiana; (2) living near the proposed FG LA, LLC (Formosa) facility in St. James Parish; and (3) living in Louisiana's Industrial Corridor.³ The Letter provided a series of recommendations for LDEQ.

G. This Agreement is entered into pursuant to the authority granted to EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and the EPA's implementing regulation found at 40 C.F.R. Parts 5 and 7, and resolves Complaint Nos. 01R-22-R6 and 04R-22-R6.

H. This Agreement is entered into voluntarily by LDEQ and does not constitute an admission by LDEQ of a violation of, or a finding of compliance or noncompliance by the EPA with, Title VI or 40 C.F.R. Parts 5 and 7.

I. A recipient of federal financial assistance's compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws. Recipients have an independent obligation to comply with federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs.

J. The disparate impact analysis under Title VI examines whether the permitting action under consideration will cause or contribute to an adverse disparate impact on the basis of race, color or national origin, which involves determining whether⁴:

1. there is a neutral policy and practice (*e.g.*, permit decision);

² The Letter was also addressed to the Louisiana Department of Health and contained initial fact finding and analysis of the civil rights issues EPA accepted for investigation in Complaint No. 02R-22-R6 (LDH Denka Complaint).

³ St. John the Baptist, St. James, Ascension, East Baton Rouge, West Baton Rouge, Iberville, and St. Charles Parishes.

⁴ See *EPA Title VI Toolkit*, p. 8, https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf.

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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2. the permitting action will cause or contribute to adversity/harm⁵ when considering the total or cumulative burdens⁶ including exposure to pollution throughout a person's lifetime;
3. the adversity/harm identified is borne disproportionately by individuals on the basis of race, color or national origin, or borne disproportionately by a community, especially in light of the characteristics of that community and,
4. there is a causal connection between the permitting action and the adversity/harm identified (that are "sufficiently substantial to raise an inference of causation"⁷).

K. EPA Enforcement Actions Related to the Denka Facility.

⁵E.g., *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446, 487, *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J.) (discussing the methods used to "evaluate the 'adversity' of the impact" and considering whether the impacts at issue were "sufficiently adverse" to establish a prima facie case), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001). *See also Bryan v. Koch*, 627 F.2d 612, 617 (2d Cir. 1980) (indicating that adversity exists if a fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm). *See EPA Title VI Toolkit*, p. 8, https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf.

⁶EPA's Office of Research and Development defines cumulative impacts as "the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes. Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person's lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community." U.S. EPA, *Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development*, U.S. Environmental Protection Agency, Washington, D.C., EPA/600/R-22/014a, 2022. p. 4, https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf.

⁷*Smith v. Xerox Corp.*, 196 F.3d 358, 364 (2nd Cir. 1999), citing *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994-995 (1988), *NAACP v. Town of East Haven*, 70 F.3d 219, 225 (2nd Cir. 1995).

Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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1. On December 28, 2022, EPA's Region 6 entered into a consent agreement with Denka Performance Elastomer, LLC and issued a final order to address waste management practices at the Denka facility that contribute to its emissions of chloroprene. Pursuant to the consent agreement, beginning January 31, 2023, Denka stopped transferring "Poly Kettle Strainer Waste" to an outside, open-air brine pit and instead met hazardous waste regulatory requirements for both storage and ultimate disposal of the waste. The terms of the consent agreement also require Denka to manage the "Poly Kettle Strainer Waste" as hazardous waste until a more robust sampling and hazardous waste determination effort can be completed by the company through a waste determination plan. Denka will continue testing additional emissions reductions measures to reduce chloroprene emissions from the management of this waste. These projects and any modifications will be subject to EPA review and approval. If successful, the emissions reduction projects alone have the potential to eliminate approximately 2 tons of chloroprene emissions per year.

2. On February 28, 2023, the U.S. Department of Justice, on behalf of EPA, filed a complaint in the U.S. District Court for the Eastern District of Louisiana under Section 303 of the Clean Air Act (CAA) against Denka to compel it to significantly reduce hazardous chloroprene emissions from the facility. The relief sought by the CAA Section 303 Complaint is that Denka immediately take all necessary measures to eliminate the imminent and substantial endangerment posed by chloroprene emissions from the facility and take all other actions as may be necessary to address and mitigate the harm to public health and welfare that Denka's chloroprene emissions have caused.

L. On April 25, 2023, EPA announced a proposed rule⁸ to significantly reduce emissions of toxic and other harmful air pollution, including ethylene oxide (EtO) and chloroprene from a number of chemical plants nationwide including 51 facilities in Louisiana. EPA's proposed rule would reduce by 96% the number of people with elevated cancer risk from breathing air toxics near these chemical plants. The proposal also requires plants subject to the rule to conduct fenceline monitoring if they use, produce, store, or emit EtO, chloroprene, benzene, 1,3-butadiene, ethylene dichloride or vinyl chloride.

M. *[Include provision that describes all current fenceline monitoring networks at Denka and length of time they will stay.]*

Commented [OM1]: LDEQ: You proposed deleting the provision later in the IRA about monitoring of chloroprene because Denka currently has fenceline monitoring. It would be useful then to describe the current monitoring including what is being monitored, who is doing it, & how long it will continue. Please also provide citation in support of your description.

⁸ New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 88 FR 25080.

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N. Pursuant to EPA Grant No. XXX, LDEQ will install and operate a Temporary Located Community (TLC) monitoring station in [specific location], St. James Parish, with an anticipated monitoring period of ~March 2024 through February 2026. The pollutants being monitored are

Commented [OM2]: LDEQ: You proposed this provision in the monitoring commitment section, but it is a factual statement. We would like it to include information about when it will operate (if that has been decided) and the pollutants that will be monitored and why they were chosen.

II. COMMITMENTS REGARDING LDEQ'S METHODS OF ADMINISTRATION (ISSUE 1)

A. Process to Identify and Address Potential Adverse Disparate Effects of Air Permitting Decision.

Commented [A3]: LDEQ must verify its statutory and regulatory authority for each of these commitments prior to finalization of an IRA

Commented [OM4R3]: LDEQ appears to have broad authority under the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, *et seq.*, particularly La. R.S. 30:2011 (D)(2), (7), (8,) and (14).

1. LDEQ will:

- a) Consider relevant demographic information and information developed through past interactions with the community to tailor public involvement efforts to the demographics and needs of the community.
- b) Identify populations in potentially impacted areas which will include but is not limited to those populations within ¼ mile, ½ mile, 1 mile, and 3 miles measured from the pollution source or the fenceline of the facility and, as appropriate to the anticipated potential impacts, another distance. In determining other appropriate distances, LDEQ will consider:
 - (1) The type of permit;
 - (2) Type of pollutant; and
 - (3) Potential adverse impacts associated with the facility (*e.g.*, odors, closure of evacuation routes, traffic, noise).
- c) Conduct an analysis to evaluate any potential adversity/harm which will consider not only the burdens and harms resulting from the permit action at issue and borne disproportionately on the basis of race, color or national origin, but also on the total or cumulative burdens including exposures throughout a person's lifetime borne disproportionately by a community, especially in light of the characteristics of that community. This analysis of impacted areas/populations will use a screening process that:

Commented [OM5]: LDEQ may also want to include 2 miles b/c it appears the legislature had some basis to believe that those living w/in 2 miles are most impacted.

Regarding public hearings on permits for facilities, the presiding officer shall give preference for speaking up to one hour after the initial thirty-minute presentation of each hearing: first to those citizens who live within a two-mile radius of the location of the facility; second to those citizens who work within a two-mile radius of the location of the facility; and third to those citizens who live within the parish of the location of the facility.

§ 2017. Public hearings; presiding officer; authority, R.S. 30:2017 B. (1)

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- (1) considers indicators (not indexes) that provide information on:
 - (a) existing environmental burdens from air and other pollution sources⁹;
 - (b) existing burden of disease and health vulnerabilities for the population living in the impacted area; and
 - (c) social conditions that contribute to a population's vulnerability to air pollution.
 - (2) uses all indicators available in EPA's EJScreen and ATSDR's Environmental Justice Index.
 - (3) uses indicators with the most recent information available¹⁰ and indicators with the smallest geographic census unit available.¹¹
 - (4) considers the indicators for all Census tracts that are bisected by the boundary of the impacted areas for a tool that only provides indicator information about the whole Census tract;
 - (5) considers both indicators if there are indicators with similar labels but the method of calculating the indicator value differs.¹² If the two different versions lead to the same outcomes and conclusions, that should increase confidence in the conclusions. If the indicators lead to different outcomes, LDEQ may conduct further investigation and analysis to determine why.
- d) Conduct the disparity analysis in paragraph II.A.1. (f) below if any indicator value for the impacted area is equal to or greater than the appropriate threshold below:

Commented [OM6]: <https://www.atsdr.cdc.gov/placeandhealth/eji/indicators.html>

⁹ It is important not to limit examination of environmental indicators to just those related to air pollution. The non-air pollution related indicators each represent a stressor on the population that may make them more vulnerable to adverse health impacts from air pollution and multiple pollutants can contribute to the etiology of a disease, and the population affected likely suffers from a range of diseases.

¹⁰ For example, both EJScreen and EJI have an Air Toxics Cancer Risk Indicator; however, EJScreen Air Toxics uses 2017 EPA NATA data while ATSDR uses 2014 NATA data. In this case, the Recipient's screening process would use EJScreen's Air Toxics Cancer Risk Indicator.

¹¹ For example, EJScreen has Environmental Indicators not found in EJI (e.g., Air Toxics Respiratory Hazard Index, Underground Storage Tanks (UST) and Leaking UST (LUST)) while ATSDR's EJI includes indicators not currently available in EJScreen such as indicators for health vulnerabilities (e.g., High Estimated Prevalence of Asthma, High Estimated Prevalence of Heart Disease); for social vulnerabilities (e.g., Lack of Health Insurance, Mobile Homes); and environmental indicators (e.g., Impaired Surface Waters, TRI Sites).

¹² For example, both EJScreen and EJI have an indicator to account for potential exposure to lead paint and for proximity to facilities with Risk Mitigation Plans; however, the method used to calculate each indicator value differs.

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- (1) 80th percentile as compared to State where possible and compared to the U.S where it is not.
- (2) 75th percentile for indicators of high estimated prevalence of chronic health conditions in EJI Health Vulnerability Module.

e) Consider compliance and complaint information for the facility at issue and other facilities in the impacted area to determine whether the facilities contribute to adverse non-health impacts including quality of life (*e.g.*, noise, odor, lights) and safety (*e.g.*, industrial truck traffic, closure of evacuation routes) from information sources including:

- (1) Title VI complaints filed with EPA or through LDEQ's civil rights grievance procedure,
- (2) LDEQ's environmental complaint system, and
- (3) Compliance information on the facility at issue and facilities in the area (*e.g.*, EPA's Enforcement and Compliance History Online (ECHO), LDEQ's [*equivalent of ECHO?*]).

f) Conduct a disparity analysis to determine whether a disproportionate share of the adversity/harm from the permit action will be borne by individuals based on their race, color, or national origin using the information gathered in II.A.1. (b) – (e). LDEQ will determine whether the adverse impacts identified affect a significantly higher proportion of protected class members (defined by race, color or national origin) than non-protected class members using at a minimum each of the following comparisons:

- (1) the population living in the impacted area as compared to the State¹³ or
- (2) the children younger than 17 living in the impacted area as compared to the State's population of children younger than 17¹⁴ or

Commented [OM7]: LDEQ: You proposed greater than 5% of the state average as your measure of disproportionality. Please explain the basis for your determination that this is a valid/reliable measure of disproportionality to apply across the board.

¹³ The process should use the most recent Census or ACS data available.

¹⁴ The process should use the most recent Census or ACS data available.

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(3) the children¹⁵ attending schools (preschool through 12th grade) located in the impacted area as compared to the State's population of school children.¹⁶

g) Seek public comment before deciding not to proceed with:

(1) the disparity analysis in paragraph II.A.1. (f) if no threshold in paragraph II.A.1. (d) above is met or exceeded, but at least one environmental indicator is above the 70th percentile or

(2) the mitigation process if the disparity analysis shows the disproportionality is near but not exceeding the significance threshold.

h) Identify and implement mitigation measures that will adequately mitigate adverse disparate impacts identified and demonstrate there are no less discriminatory alternatives.¹⁷ The process will:

(1) Determine whether there is a substantial legitimate justification for the action that is necessary to meet a goal that is legitimate, important, and integral to LDEQ's institutional mission.

(2) Seek public comment during the permit review process on the assessment conducted in paragraphs II.A.1. (b) – (g) above and appropriate mitigation measures/less discriminatory alternatives identified and considered including those in paragraph II.A.1. (i) and consider the public comment when developing permit conditions.

i) Identify appropriate measures to mitigate the adverse disparate impacts identified through the analysis in paragraphs II.A.1. (b) – (e) which:

(1) will include but are not limited to:

¹⁵ Children may be at greater risk to environmental contaminants than adults due to differences in behavior and biology and that the effects of early life exposures may also arise in adulthood or in later generations. EPA's 2021 Policy on Children's Health (October 5, 2021).

¹⁶ The screening process should use the most recent demographic data from the U.S. Department of Education, National Center for Education Statistics, <https://ocrdata.ed.gov/>.

¹⁷ A less discriminatory alternative is a comparably effective practice that causes less of a disparate impact than the challenged practice. Mitigation measures that would lessen or eliminate the demonstrated adverse disparate impacts, could be part of a less discriminatory alternative; however, alternatives may also include practices or policies of a different manner or other actions that ameliorate the adverse disparate impact.

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- (a) permit conditions necessary to assure compliance with Title VI¹⁸ including but not limited to;
 - (i) enhanced compliance assurance permit provisions, including but not limited to monitoring, recordkeeping and reporting to assure the facility is meeting its permitted limits and following industry best practices;
 - (ii) enforceable permit conditions to reflect modeling assumptions on which a compliance demonstration was based (e.g., hours or mode of operation);
- (b) alternative sites and alternative projects;
- (c) require an enhanced fugitive emissions detection and repair program for pollutants of concern;
- (d) require an odor monitoring and response program/plan to address third-party complaints;
- (e) evaluate whether a proposed permit warrants air quality modeling scrutiny as part of the permit review, particularly where community has experienced historical impacts from existing or recently constructed projects;
- (f) implement appropriate pollution prevention techniques;
- (g) Notify other governmental agencies who have authority to take action to reduce the adverse disparate impacts.
- (h) develop new and revised regulations that consider sources contributing to local impacts;
- (i) prioritizing grant funding for projects that reduce emissions in impacted areas;

Commented [OM8]: LDEQ: we accepted your proposed wording.

Commented [OM9]: LDEQ: we accepted your proposed language

Commented [OM10]: LDEQ: we accepted your proposed wording

¹⁸ R.S. 30:2011 “(D) The secretary shall have the following powers and duties: . . . (2) The secretary shall have the general power to require such conditions in individual instances as are necessary to assure compliance with applicable federal laws and regulations relating to this Subtitle. In those instances in which a permit or license is required prior to construction of a new or modified facility, the secretary may issue construction authorizations prior to issuance of a permit in appropriate circumstances where there is a positive human health or environmental benefit. . . .”

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- (j) enforceable agreements (*e.g.*, community benefit agreements);
 - (k) permit denial;
 - (l) permit conditions to reduce impacts (*e.g.*, reduced hours of operation; reduced through put) or reopen permit which take immediate effect if evaluation in paragraph X below demonstrates the mitigation measures did not adequately address the adverse disparate impacts; and
 - (m) prioritizing compliance inspections and any resulting enforcement initiatives for the facility and/or other sources contributing to the identified adverse disparate impacts.
- j) identify indicators and implement methods to track progress on reaching implementation goals within a reasonable time frame and the thresholds for follow up actions if goals are not achieved in the specified time frame including:
- (1) increased emissions monitoring;
 - (2) inspections;
 - (3) review of records and monitoring reports;
 - (4) health monitoring;
 - (5) community based participatory research; and
 - (6) special studies to measure and model local pollution impacts which could include collaboration with other State and Federal agencies.
- k) take appropriate immediate remedial action if the evaluation in paragraph j demonstrates that the mitigation measures did not perform as projected. Remedial measures may include but are not limited to:
- (1) reopen the permit;

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- (2) prioritize compliance inspections and any resulting enforcement initiatives for the facility and/or other sources contributing to the identified adverse disparate impacts;
- (3) implement additional permit conditions designed to reduce the adverse disparate impacts identified but whose operation was contingent upon finding from the evaluation in paragraph 9. c. below that the mitigation measures implemented did not perform as projected; and
- (4) require conditions on permits of other facilities contributing to the adverse disparate impacts.

2. LDEQ will conduct the Process to Identify and Address Potential Adverse Disparate Effects of Air Permitting Decisions in Section II. A. for the following types of air permit applications:

- a) New major source as defined at LAC 33:III.502;
- b) New major stationary source or major modification as defined at LAC 33:III.509;
- c) New facility with proposed facility-wide emissions greater than 80% of the relevant major source threshold (synthetic minor source);
- d) Title V permit renewals that propose an allowable emissions increase greater than 80% of a major source threshold; and
- e) New air permits not listed in paragraphs i through iii; and a permit amendment, modification, or renewal for any permit:
 - (1) where concerns about environmental justice issues or discriminatory impacts have been raised by the public;
 - (2) in an identified area of concern (e.g., area where LDEQ has received consistent odor complaints); or
 - (3) for the type of facility that communities generally raise concerns about (e.g., chemical plants, refineries, grain terminals).

3. Post Permitting Public Outreach

- a) Establishing a point of contact within LDEQ for the community;

Commented [OM11]: LDEQ: On the 3/2 call you said you would provide proposed language describing how LDEQ has or would define an area of concern (e.g., would the whole Industrial Corridor be one of the areas of concern? Lake Charles? Baton Rouge? all designated industrial areas under RS 33:130.11?, identified through some other methodology?) and the process for the public to raise concerns especially if there is no notice or a comment period for a particular permit.

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- b) Providing an explanation of requirements/enforceable provisions in the permit (e.g., monitoring, record keeping, web reporting);
- c) Monitoring of all mitigation measures implemented but not included in the issued permit including those that require the participation of other federal, state, and local authorities;
- d) Providing information as appropriate, about how community members can use that information to assess compliance;
- e) Providing periodic public updates;
- f) LDEQ will conduct ongoing public education and outreach through:
 - (1) Enviroschool training for the public on LDEQ's permitting procedures and how to engage in the permitting process;
 - (2) Periodic public meetings/listening sessions to be conducted in the Industrial Corridor; and
 - (3) Encouraging facilities to engage in community outreach through public meetings, formation of citizen advisory panels, etc.

Commented [OM12]: LDEQ: Please define periodic.

4. Due Dates for Section II A

- a) Within 90 days of the effective date of this Agreement, LDEQ will submit to EPA for review and approval the draft process for its Process to Identify and Address Potential Adverse Disparate Effects of Air Permitting Decision (Title VI DI Analysis) in II. A. above.
- b) Within 30 days of EPA approval of the draft Title VI DI Analysis, LDEQ will publish the draft Title VI DI Analysis for public comment.
- c) Within 60 days of end of the public comment period LDEQ will submit to EPA a copy of all public comments received and the LDEQ draft response to public comments.
- d) Within 30 days EPA will provide any comments to the draft response to comments.
- e) Within 30 days of receipt of EPA comments, LDEQ will submit to EPA its final draft of the Title VI DI Analysis for approval.

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- f) Within 30 days of approval by EPA, LDEQ will publish the final Title VI DI Analysis on its Air Permitting webpage with links to the webpage with LDEQ's Title VI information (*e.g.*, grievance procedures, LEP plan), website.
 - g) Within 60 days of EPA approval of the Title VI DI Analysis, LDEQ will submit the materials developed to train LDEQ employees on the Title VI DI Analysis.
 - h) Within 30 days of submitting the training materials, LDEQ will provide EPA with the dates the training was provided to current LDEQ employees and confirmation that the training has been added to new employee training requirements.
- 5. LDEQ will submit to EPA for review and approval changes to LDEQ's Title VI DI Analysis during the period of this Agreement.
 - a) Within 30 days EPA will provide any comments to the proposed changes.
 - b) LDEQ will publish the revised Title VI DI Analysis on its website.
- 6. Evaluation of Implementation

Annually for five years after the effective date of this Agreement, LDEQ shall submit to EPA and publish on its website an evaluation of the results of the implementation of the Title VI DI Analysis in its air permitting program.
- B. Cumulative Impacts Assessments
 - 1. Cumulative Impact Assessment for St. John the Baptist Parish
 - a) EPA will fund a cumulative impact assessment (CIA) for Reserve, St. John the Baptist Parish. The scope of the CIA includes characterizing community and environmental conditions with respect to exposures to chemical and non-chemical stressors and then developing recommendations of prioritized actions to manage the exposures and effects identified.
 - b) LDEQ commits to being part of the Cumulative Impact Assessment Working Group described below.

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c) The CIA will include the following elements and each element will be completed within the time frames identified below.

(1) Create foundation for success by strengthening relationships and trust among stakeholders through convening a working group and establishing a charter.

(a) EPA will hire an independent facilitator or use the services of the EPA Conflict Prevention and Resolution Center and establish a Cumulative Impact Assessment Working Group (CIAWG) and establish a workgroup charter.

(b) The CIAWG will be comprised of an equitable representation of stakeholders that will oversee the CIA and will ensure that those who traditionally have had no voice in these processes are included. Consideration will be given to representation from community members from St. James Parish to the extent it assists in the CIA and may provide efficiencies for performance of the CIAs in both St. John the Baptist Parish and St. James Parish.

(c) The charter will describe roles, responsibilities, goals of the CIA, deliverables beyond those required below, and timeline for those deliverables.

(d) EPA, in consultation with the CIAWG, will establish a mechanism for providing the community of Reserve, and surrounding communities, notice of the upcoming CIA activities

(e) Element 1 will be completed within 150 days from effective date of this agreement.

(2) Identify and come to consensus on boundaries of CIA project through scoping.

(a) The CIAWG will prioritize non-chemical and chemical exposures and effects of concern to evaluate in the assessment.

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(b) The CIAWG will develop a scoping document that will describe selected methods for conducting baseline and scenarios analyses. The scoping document will include a quality assurance, peer review project plan, and a communication plan for all aspects of the CIA including the scoping document and final report.

(c) Element 2 will be completed within 120 days of the completion of Element 1.

(3) Determine current cumulative impacts and establish data for the baseline and decision alternatives through conducting CIA and preparing formal CIA report.

(a) The CIAWG will:

(i) review and analyze available data to assess baseline exposures and effects of concern;

(ii) identify decision alternatives for mitigation that address stakeholder goals and assess projected effectiveness of different decision alternatives for meeting those goals;

(iii) produce a plain language report that includes purpose, analytical methods, prioritization of exposures and effects to mitigate, description of development and assessment of decision alternatives, and summary of the main findings; and

(iv) post a draft report and underlying data for public review and comment.

(b) The Element 3 final report that addresses public comments will be completed within 365 days from completion of Element 2.

(4) Identify feasible strategies to mitigate adverse impacts identified through CIA and develop recommendations.

(a) The CIAWG will:

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(i) develop clear criteria for evaluating the decision alternatives assessed in Element 3 to prioritize mitigation actions and implementation steps and estimated timelines; and

(ii) post a draft recommendations report for public comment.

(b) The Element 4 final report that addresses public comments will be completed within 120 days from completion of Element 3.

(5) Develop tenable plan and implement priority recommendations.

(a) LDEQ will work with EPA and other agencies and organizations, as appropriate, to develop an implementation plan based on which recommendations will be implemented.

(b) EPA and LDEQ will post a draft implementation plan, including a timeline, for public comment.

(c) The Element 5 final implementation plan that addresses public comments will be completed within 120 days from completion of Element 4.

(d) LDEQ will implement final implementation plan.

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(6) Track progress on implementation and execute adaptive management approaches through evaluation strategy.

- (a) EPA and LDEQ will work with the CIAWG and other agencies and organizations, as appropriate, to draft a monitoring and adaptive management plan that will identify indicators and monitoring methods to track progress on reaching implementation goals, and triggers for follow up actions if goals are not going to be achieved in the specified timeframe.
- (b) EPA, LDEQ, and the CIAWG will prepare annual written progress reports which will be made publicly available.
- (c) The monitoring and adaptive management plan will be completed within 90 days from completion of Element 5.

2. Cumulative Impact Assessment for St. James Parish

- a) LDEQ will fund a cumulative impact assessment (CIA) for Welcome, St. James Parish.
- b) The scope of the CIA includes characterizing community and environmental conditions with respect to exposures to chemical and non-chemical stressors and then developing recommendations of prioritized actions to manage the exposures and effects identified.
- c) The CIA will include the following elements and each element will be completed within the time frame identified below.

(1) Create foundation for success by strengthening relationships and trust among stakeholders through convening a working group and establishing a charter.

- (a) LDEQ will hire an independent facilitator and establish a Cumulative Impact Assessment Working Group (CIAWG) and with the CIAWG, establish a workgroup charter.

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- (b) The CIAWG will be comprised of an equitable representation of stakeholders that will oversee the CIA and will ensure that those who traditionally have had no voice in these processes are included.
 - (c) The charter will describe roles, responsibilities, goals of the CIA, deliverables beyond those required below, and timeline for those deliverables.
 - (d) LDEQ in consultation with the CIAWG, will establish a mechanism for providing the community of Welcome, and surrounding communities, notice of the upcoming CIA activities
 - (e) Element 1 will be completed within 150 days from effective date of this agreement.
- (2) Identify and come to consensus on boundaries of CIA project through scoping.**
- (a) The CIAWG will:
 - (i) prioritize non-chemical and chemical exposures and effects of concern to evaluate in the assessment; and
 - (ii) develop a scoping document that will describe selected methods for conducting baseline and scenarios analyses. The scoping document will include a quality assurance, peer review project plan, and a communication plan for all aspects of the CIA including the scoping document and final report.
 - (b) Element 2 will be completed within 120 days of the completion of Element 1.
- (3) Determine current cumulative impacts and establish baseline data through conducting CIA and preparing formal CIA report.**
- (a) CIAWG will:

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- (i) review and analyze available data to assess baseline exposures and effects of concern;
 - (ii) identify decision alternatives for mitigation that address stakeholder goals and assess projected effectiveness of different decision alternatives for meeting those goals;
 - (iii) produce a plain language report that includes purpose, analytical methods, prioritization of exposures and effects to mitigate, development and assessment of decision alternatives, and summary of the main findings; and
 - (b) LDEQ will post the draft report and underlying data for public review and comment on the LDEQ website.
 - (c) The Element 3 final report that addresses public comments will be completed within 365 days from completion of Element 2.
- (4) Identify feasible strategies to mitigate adverse impacts identified through CIA and develop recommendations.**
- (a) The CIAWG will develop clear criteria for evaluating the decision alternatives assessed in Element 3 to prioritize mitigation actions and implementation steps and estimated timelines.
 - (b) LDEQ will post the draft recommendations report for public comment on the LDEQ website.
 - (c) The Element 4 final report that addresses public comments will be completed within 120 days from completion of Element 3.
- (5) Develop tenable plan and implement priority recommendations.**
- (a) LDEQ, EPA, and other agencies and organizations, as appropriate, will develop an implementation plan based on which recommendations will be implemented.

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- (b) LDEQ will post a draft implementation plan, including a timeline, for public comment on the LDEQ website.
- (c) The Element 5 final implementation plan that addresses public comments will be completed within 120 days from completion of Element 4.
- (d) LDEQ will implement final implementation plan.
- (6) **Track progress on implementation and execute adaptive management approaches through evaluation strategy.**
 - (a) LDEQ will work with the CIAWG and other agencies and organizations, as appropriate, to draft a monitoring and adaptive management plan that will identify indicators and monitoring methods to track progress on reaching implementation goals, and triggers for follow up actions if goals are not going to be achieved in the specified timeframe.
 - (b) LDEQ and the CIAWG will prepare annual written progress reports which will be made publicly available via posting in the LDEQ website.
 - (c) The monitoring and adaptive management plan will be completed within 90 days from completion of Element 5.

3. Industrial Corridor Parishes Screening Assessments

- a) Separate from and as a corollary to the Title VI DI Analysis performed on individual permits under Section II.A of this Agreement, LDEQ will conduct a screening assessment for each Parish within the Industrial Corridor (Parish-level Screening Assessments) with respect to existing conditions to identify communities potentially at risk of disproportionate adverse impacts.
- b) The Parish-level Screening Assessments will:

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- (1) include characterizing communities with respect to the factors considered in the permit application screening process at the time the assessment is conducted and other community-identified human health, ecological, and vulnerability concerns;
- (2) solicit community input at the outset in order to receive suggestions from Parish residents as to factors to be considered during the screening process;
- (3) use EPA's EJ SCREEN, the Agency of Toxic Substances and Disease Registry's Environmental Justice Index, or other available tools. To the extent available, if there are additional environmental or health and disease data collected at the State, Parish, or community level, the assessment will also review such data; and
- (4) include a review of emission trends, modeling and monitoring results conducted within the Industrial Corridor.

- c) LDEQ will consult with LDH in conducting the Parish-level Screening Assessment.
- d) LDEQ will complete the Parish-level Screening Assessments within 180 days of the effective date of this Agreement.
- e) LDEQ will make the results of the Parish-level Screening Assessments available for public review and comment on the LDEQ website prior to finalizing each Parish-level Screening Assessment.
- f) LDEQ will issue a report describing the methodologies and data utilized in the Parish-level Screening Assessments and providing tabular and visually mapped identification of communities as potentially at risk.

4. Cumulative Impact Assessments for the Industrial Corridor

- a) LDEQ commits to apply for Federal funding opportunities that may become available for conducting cumulative impact analyses in any of the Parishes within the Industrial Corridor. Funding opportunities include not only those offered to State agencies, but also those offered to State agencies in collaboration with community groups.

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b) Beginning within 180 days from the effective date of this Agreement and every 180 days thereafter, LDEQ will provide updates to EPA on its efforts to seek appropriate funding and technical assistance. Those updates shall include the specific steps that LDEQ has taken to secure funding or technical assistance, including designating a person responsible for identifying and applying for any appropriate funding or program identifying potential funding sources, and the status of any applications for those funding sources.

c) This provision remains in effect for five years from the effective date of this Agreement.

C. Community Meetings

1. Within 60 days from the effective date of this Agreement, LDEQ will host four community meetings to discuss the commitments made by LDEQ in this Agreement as specified below:

- a) One meeting will be held in St. John the Baptist Parish as close to Reserve as possible;
- b) One meeting will be held in St. James Parish as close to Welcome as possible; and
- c) Two additional meetings will be held in other Parishes within the Industrial Corridor.

2. At least 15 days in advance of the meeting in St. John the Baptist Parish, LDEQ will mail notice of the date, location, and time of the public meeting to the resident of Reserve, Louisiana and post it on LDEQ's public notice webpage and website calendar.

3. At least 15 days in advance of the meeting in St. James Parish, LDEQ will mail notice of the date, location, and time of the public meeting to the resident of Welcome, Louisiana and post it on LDEQ's public notice webpage and website calendar.

4. At least 15 days in advance of the meetings in paragraph II. C. 1. c., LDEQ will post notice of the date, location, and time of the public meetings on its public notice webpage and website calendar.

Commented [OM13]: LDEQ: EPA is willing to provide technical assistance as well as professional facilitation for these meetings.

Commented [A14]: Public venues do not always accommodate participation by virtual modes. If a meeting is held at LDEQ Galvez Conf Center, that meeting could also be virtual.

Commented [OM15R14]: Is LDEQ saying the only virtual meeting it could hold is in LDEQ Galvez Conf Center? You can't host a virtual meeting anywhere else in the Corridor? If not, then the 3rd should be at the Galvez Conf. Center which we hope is in Baton Rouge. LDEQ should propose criteria for selecting the 4th location, maybe the most impacted area left or location that is not far from several Parishes.

Commented [A16]: Notice will be by LDEQ public notice webpage and website calendar.

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5. LDEQ will ensure that the selection of the meeting locations, dates, and times will consider the availability and schedules of public transportation and consideration of residents' work hours; and ensure that the location(s), dates, and times will allow for meaningful participation/involvement by individuals with limited English proficiency (LEP) and individuals with disabilities.

6. EPA is available to provide technical assistance to LDEQ to ensure the meetings are meaningfully accessible to all residents.

D. Scientific Integrity and Risk Communication

1. Within 30 days of the effective date of this Agreement, LDEQ will appoint a Scientific Integrity Official to champion scientific integrity throughout LDEQ. The Scientific Integrity Official will provide oversight for the implementation of the Scientific Integrity Policy at LDEQ and is available to address any questions or concerns regarding this policy and its implementation.

2. Within 150 days of the effective date of this Agreement, LDEQ will submit a draft Scientific Integrity Policy to EPA to demonstrate that LDEQ will require that the decision-making process is supported and driven by best available science and in accordance with guidance of reputable scientific agencies, including CDC, NIH, and ATSDR. EPA recommends that LDEQ model its Scientific Integrity Policy on EPA's Scientific Integrity Policy found at https://www.epa.gov/sites/default/files/2014-02/documents/scientific_integrity_policy_2012.pdf. EPA will review the draft Policy in accordance with Paragraph IV.C. of this Agreement.

3. LDEQ will issue its Scientific Integrity Policy within 20 days of final approval by EPA in accordance with Paragraph IV.C. of this Agreement. The Policy will apply to all LDEQ employees, including scientists, managers, and political appointees, who will follow this policy when engaging in, supervising, managing, or influencing scientific activities; communicating information in an official capacity about LDEQ scientific activities; and utilizing scientific information in making LDEQ policy or management decisions relevant to science and health. In addition, all contractors, grantees, collaborators, and student volunteers who engage in scientific activities are expected to uphold the standards established by LDEQ Scientific Integrity policy.

4. Within 90 days of the adoption of LDEQ's Scientific Integrity, LDEQ will provide EPA with a copy of any training materials, the dates the training was provided to current LDEQ employees, and confirmation that the training has been added to new employee training requirements.

E. Risk Communication

Commented [A17]: This reference (II.A.1) is misplaced. Also, these meetings are to communicate elements of the IRA, not to communicate risk from air toxics.

Commented [OM18R17]: Agreed.

Commented [OM19]: LDEQ: These are the same revised Scientific Integrity provisions given to LDH. This section no longer includes the requirement for more than one Scientific Integrity Official (SIO) and the council of SIOs. We accepted some of your proposal regarding risk communication from the provision you suggested in lieu of the Scientific Integrity (SI) & Risk Communication sections; however, we have kept the SI provisions regarding an SIO, a written policy, & training.

Commented [OM20]: LDEQ: We adopted LDEQ's proposed language regarding a training module and no longer specifically require adoption of EPA's SALT framework.

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1. Within 60 days of the effective date of this Agreement, LDEQ will adopt EPA's SALT Framework: A Process Framework to Guide Risk Communication (<https://www.epa.gov/risk-communication/salt-framework>) or a comparable risk communication framework (LDEQ's Risk Communication Framework) and will provide confirmation of the adoption of the framework to EPA.

2. Within 120 days of the adoption of LDEQ's Risk Communication Framework, LDEQ will provide EPA with a copy of any training materials, the dates the training was provided to current LDEQ employees, and confirmation that the training has been added to new employee training requirements.

F. Air Emissions Monitoring

1. For facilities that currently or propose to emit EtO LDEQ will incorporate into new permits or permit renewals a three-year fenceline monitoring requirement for those pollutants.

2. LDEQ will seek to extend the total monitoring period for the Temporary Located Community (TLC) monitoring station referenced in St. James Parish paragraph I. N. above for an additional two years (March 2024 through February 2026) above, through grant funding, permitting, or enforcement activities.

3. LDEQ will conduct at least three monitoring events in the Industrial Corridor each year for the next three fiscal years (July 1, 2023, through June 30, 2026) using its Mobile Air Monitoring Labs (MAML).

4. LDEQ will conduct a public engagement process prior to making decisions that impact the placement, length of time the TLC and MAML monitors will be in place, and monitoring parameters (e.g., NO₂, PM_{2.5}, H₂S, SO₂, Methane/NMOC, THC, VOCs including HAP and ozone precursors) for the monitoring described in paragraph G. 2 and 3 above.

Commented [OM21]: LDEQ: The rule will not be finalized for a while and its final form is unknown. This provision provides for monitoring now. We have included a provision in the Background about the Denka chloroprene monitoring network which includes fenceline monitors. Would LDEQ commit to deploy the TLC or MAMLs to monitor EtO and other pollutant emissions levels (e.g., H₂S) of concern to residents in St. James, St. John the Baptist, and other communities near EtO emitters for meaningful periods of time in the meanwhile?

Commented [OM22]: LDEQ: Inserted to address resident concerns raised on several occasions about the location of monitors, pollutants LDEQ chose not to monitor, and the duration.

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5. LDEQ commits to apply for Federal funding opportunities that may become available for air emissions monitoring in any of the Parishes within the Industrial Corridor. Funding opportunities include not only those offered to State agencies, but also those offered to State agencies in collaboration with community groups.

6. Beginning within 180 days from the effective date of this Agreement and every 180 days thereafter, LDEQ will provide updates to EPA on its efforts to seek appropriate funding. Those updates shall include the specific steps that LDEQ has taken to secure funding, including designating a person responsible for identifying and applying for any appropriate funding or program identifying potential funding sources, and the status of any applications for those funding sources,

7. This provision remains in effect for three years from the effective date of this Agreement.

G. Actions to Related to Denka

1. LDEQ will issue the proposed Title V renewal permits for public comment for the Denka Chloroprene Unit, Neoprene Unit, and HCl Recovery Unit within 90 days after the conclusion of the CIA in section II. B. above. The proposed renewal permits will incorporate the following permit revisions:

- a) Emission limits for chloroprene based on the controls and emission reduction projects implemented under the 2017 LDEQ Administrative Order on Consent (AOC);
- b) Any additional emission reductions achieved by Denka since implementation of the 2017 AOC;
- c) Compliance assurance measures, which may include emissions testing, emissions and/or operating parameter monitoring, recordkeeping and reporting to demonstrate ongoing compliance with chloroprene emission limits;
- d) Any planned or ongoing emission reduction projects or changes to work practice standards required by final and effective enforcement actions or agreed to under any settlement or administrative order, with the associated compliance schedule;
- e) All federally applicable requirements (as defined at LAC 33.III.502), including applicable technology-based emission limitations, work practice standards, and monitoring requirements;

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f) Any final and effective revisions to any federally applicable requirement with future compliance dates; and

g) Any recommendations to LDEQ from the final CIA implementation plan in paragraph II. B. related to the permits for the Denka facility.

2. LDEQ's public notice and comment process on the Denka Title V permit renewals will follow LDEQ's Title V public participation requirements and will meet any applicable procedural requirements under the Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to commitments in Section III below.

3. LDEQ will for the next 5 years update its webpage "Denka: The Path Forward" with a summary of all inspections and enforcement actions taken at the Denka facility including links to relevant documents in EDMS. Summaries will be posted within 30 days of completion of the inspection or enforcement activity.

H. Updating LDEQ's Ambient Air Standards (AAS)

LDEQ will develop a process to update LDEQ's current Ambient Air Standards (AAS); to regularly update the AAS; and to add chronic standards beginning with mercury and hydrogen sulfide. When considering data for both acute and chronic standards, LDEQ will use the best available data (e.g., for chronic standards utilize U.S. EPA Reference Concentrations (RfCs) or Inhalation Unit Risks (IURs)). Within 180 days of the effective date of this Agreement, LDEQ will provide EPA confirmation of the adoption of this process.

I. Modelling of Emissions in St. James and St. John the Baptist Parishes

1. Within XX days of the effective date of this Agreement, LDEQ will conduct HEMS modelling of EtO and chloroprene emissions from facilities in St. James and St. John the Baptist Parishes.

2. Within 90 days of completing the HEMS modelling in paragraph II. I. 1. above, LDEQ will provide a risk communication presentation about the results of the HEMS modelling to residents and Parish government agencies including school boards.

J. Public Engagement

Commented [OM23]: LDEQ: We added in recognition of information is in EDMS while addressing community concerns about timely information using LDEQ's existing Denka webpage.

Commented [OM24]: LDEQ: EPA's draft provision did not presume any outcome as bullet 2 stated nor does the provision make LDEQ's program subject to EPA oversight through the IRA. The provision says LDEQ will come up with a plan to update now, regularly update, & send us a copy of the plan.

Commented [A25]: • LDEQ's Air Toxics Program is a state program, adopted and implemented under state authority. It is not a SIP program subject to EPA oversight. LDEQ will not render the program subject to EPA oversight through the IRA.

• LDEQ AAS are adopted by rule in accordance with the Administrative Procedures Act. LDEQ cannot and will not presume the outcome of any rulemaking.

• If undertaking any rulemaking to revise or add new AAS, LDEQ would rely on the best available data at the time of the rulemaking.

Commented [A26]: LDEQ will not agree to HEM4 modeling of ethylene oxide and chloroprene emissions.

• EJScreen incorporates the results of AirToxScreen, which in turn utilizes HAPTEM, not HEM, to estimate exposure and risk.

• EPA has (presumably) modeled estimated risks for ethylene oxide and chloroprene emitting facilities, including those in St. James and St. John the Baptist, in conducting the residual risk reviews required under the CAA. These rule revisions, with results of the risk estimates, are to be proposed in March 2023.

• EPA IURs for both ethylene oxide and chloroprene are currently subject to court challenge.

Commented [OM27]: LDEQ: Would LDEQ commit to deploy the TLC or MAMLs to monitor EtO and other pollutant emissions levels (e.g., H2S) of concern to residents in St. James, St. John the Baptist, and other communities near EtO emitters for meaningful periods of time in the meanwhile?

Commented [A28]: Propose this entire section be eliminated. Public engagement has been addressed in other sections of the draft IRA.

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1. LDEQ's practice is to include all meeting records and written communication in the Electronic Data Management System (EDMS) file for the regulated facility. LDEQ will ensure that this includes notes of meetings or other oral communication with permit applicants and written communication and other outside parties regarding permit applications that are releasable under Louisiana Open Records law (e.g., applicant's comments on draft permit monitoring terms and conditions, emissions limitations).

Commented [A29]: It is already LDEQ's practice to include all meeting records and written communication in the EDMS file for the regulated facility.

Commented [OM30R29]: We incorporated LDEQ's statement about what it already does. Complainants raised concerns that not all information regarding meetings & oral communications were included in the record. This just spells out that LDEQ already does this.

2. LDEQ will post relevant Title V permit files on its website at least 45 days before a draft Title V permit is published for comment.

Commented [A31]: This is not a reasonable timeframe. However, a list of all permit applications received by the Department is maintained on LDEQ's website per the statutory requirement in La. R.S. 30:2022.1, and any interested person may request to receive monthly email notifications from the Department regarding applications received.

3. LDEQ will provide a link on its Website Homepage to its spreadsheet of all air permit applications received and pending which includes minor source applications.

Commented [OM32R31]: What is a reasonable timeframe?

4. Within 180 days, LDEQ will develop and implement a policy to provide public notice and comment for minor source permit applications:

Commented [A33]: As noted in our response, we already have a spreadsheet on our website of all applications received and pending which includes minor source applications. We don't need to agree to anything further on this.

a) where concerns about environmental justice issues or discriminatory impacts have been raised by the public;

b) in an identified area of concern (e.g., area where LDEQ has received consistent odor complaints); and

c) for the type of facility that communities generally raise concerns about (e.g., chemical plants, refineries, grain terminals).

Commented [OM34R33]: We tried to find the spreadsheet LDEQ refers to in its website & were unsuccessful. Proposed provision is a compromise to our provision:

LDEQ will notify the public via LDEQ's website when it receives a minor source permit application for which LDEQ regulations do not require public notice and comment.

5. LDEQ's public notice and comment and public hearing on draft Title V and minor source permits will follow LDEQ's Title V public participation requirements and will meet any applicable procedural requirements under the Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to Section III below.

Commented [A35]: No, we will not agree to this.

Commented [OM36]: LDEQ: In discussions you stated you have discretion & would consider doing more for permits that don't usually have public notice & comment:

- where concerns about environmental justice issues or discriminatory impacts have been raised by the public;
- in an identified area of concern (e.g., area where LDEQ has received consistent odor complaints);
- for the type of facility that communities generally raise concerns about (e.g., chemical plants, refineries, grain terminals).

III. COMMITMENTS REGARDING LDEQ'S PROCEDURAL SAFEGUARDS (ISSUE 2)

A. LDEQ agrees to the following commitments:

Commented [OM37]: Tracks language LDEQ provided above about Denka Title V renewal permit process.

1. Notice of Non-Discrimination under the Federal Non-Discrimination Laws¹⁹

Commented [A38]: DELETE FROM DOCUMENT- LDEQ already makes the necessary non-discrimination notices as required under both state and federal law. See [Notice of Nondiscrimination | Louisiana Department of Environmental Quality](#)

Commented [A39R38]: LDEQ: EPA restored Section III, previously struck in full by LDEQ. As explained during our conversations with LDEQ, LDEQ is not meeting these procedural requirements.

¹⁹ 40 C.F.R. §7.95

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a) LDEQ will post a notice of non-Discrimination (Notice) on LDEQ's website homepage, in all LDEQ's offices and facilities, and in future general publications that are distributed to the public (e.g., public outreach materials, such as brochures, notices, fact sheets or other information on rights and services; applications or forms to participate in or access LDEQ programs, processes or activities). LDEQ will ensure that its Notice is accessible to individuals with limited-English proficiency (LEP) and individuals with disabilities, including ensuring that the Notice as posted on its Website Homepage is accessible to persons who are blind or have low vision.

b) The Notice will contain, at a minimum, the following recommended text:

- (1) LDEQ does not discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex in administration of its programs or activities.
- (2) For LDEQ programs that are covered by 40 C.F.R. Parts 5 and 7, the notice shall also contain text that LDEQ does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.
- (3) [Insert name and title of non-discrimination coordinator] is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7 (Non-Discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination laws).

Commented [A40]: Prominent Posting and Accessibility: Will LDEQ commit to prominently posting its Notice? Will LDEQ commit to ensuring the Notice is meaningfully accessible to persons with LEP (in all appropriate languages) and persons with disabilities?

This Notice is not prominently posted on the LDEQ homepage. It must be searched in order to be found.

Prominent Posting (virtually) can be accomplished by placing a visible link to LDEQ's Nondiscrimination page on the homepage to provide access for the public.

This link must be accessible to persons with LEP (in all appropriate languages) and to persons with disabilities.

The Nondiscrimination Page should include all relevant information for the public including: 1. Notice of Nondiscrimination (including Nondiscrimination Coordinator information), 2. Grievance Procedures, 3. Complaint Forms, if used, 4. Language Access Plan, 5. Public Participation Plan.

Commented [A41]: The webpage where this document is included (and the entire LDEQ website) do not have any information or accessibility aid for individuals with disabilities.

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(4) If you have any questions about this notice or any of LDEQ's non-discrimination programs, policies or procedures, you may contact:

- (a) (Name)
- (b) (Position)
- (c) (Organization/Department)
- (d) (Address)
- (e) (Phone Number)
- (f) (Email)

(5) If you believe that you have been discriminated against with respect to an LDEQ program or activity, you may contact the [insert title of non-discrimination coordinator] identified above or visit our website at [insert Recipient website address] to learn how and where to file a complaint of discrimination.

c) Within 30 days after the effective date of this Agreement, LDEQ will submit to the EPA for review a draft copy of its Notice of Non-Discrimination that is consistent with 40 C.F.R. Parts 5 and 7. EPA's review of the draft Notice of Non-Discrimination will be in accordance with Paragraph IV.C. of this Agreement. Following final approval by EPA, LDEQ will prominently publish in print and on its website the Notice of Non-Discrimination.

d) If the identity of the Non-Discrimination Coordinator changes, then LDEQ will promptly update materials as appropriate.

2. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws²⁰

a) LDEQ will post Grievance Procedures to promptly and fairly process and resolve discrimination complaints filed under federal non-discrimination statutes and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7 on LDEQ's website homepage(s), in all LDEQ's offices and facilities, and in its general publications as appropriate that are distributed to the public. LDEQ will ensure that its Grievance Procedures are accessible to individuals with LEP and individuals with disabilities, including ensuring that the Grievance Procedures posted on LDEQ's Website Homepage is accessible to individuals who are blind or have low vision.

Commented [A42]: Currently, your notice names Roger Ward and lists his position as "LDEQ Ombudsman." Although I understand you expressly named him as the Nondiscrimination Coordinator in an earlier paragraph, for clarity, his role as "Nondiscrimination Coordinator" should be listed here.

Commented [A43]: Will LDEQ commit to placing all relevant nondiscrimination materials on the same "Nondiscrimination" page?

The Notice concludes with the following sentence: "or visit LDEQ's website to learn how and where to file a complaint of nondiscrimination." Where is this directing complainants to go? <https://www.deq.louisiana.gov/page/notice-of-nondiscrimination>

Commented [A44]: DELETE FROM DOCUMENT- LDEQ already has such a grievance procedure. See [Microsoft Word - TITLE VI Grievance Procedure Revised.docx \(louisiana.gov\)](#)

Commented [A45R44]: Is LDEQ willing to revise its Grievance Procedures as described below, prominently post, and make accessible to individuals with LEP and individuals with disabilities?

I have identified omissions and required language additions in the current Grievance Procedures, below.

Commented [A46]: Prompt and fair Grievance Procedures (GPs), Prominent Posting, and Accessibility: Will LDEQ commit to 1) revising its current GPs to reflect critical information outlined below, 2) post it prominently on its webpage, and 3) ensure it is accessible to persons with LEP and persons with disabilities? See also <https://www.epa.gov/system/files/documents/2023-01/Form%204700-4%20Technical%20Assistance%20-%20Grievance%20Procedures.pdf>

LDEQ's GPs are not complete, prominently posted or accessible. (LDEQ should create one "Nondiscrimination" page for all of its documents.)

The Nondiscrimination Page should include all relevant information for the public including: 1. Notice of Nondiscrimination (including Nondiscrimination Coordinator information), 2. Grievance Procedures – clearly spelling out basis for discrimination, who will investigate, etc. 3. Complaint Forms – LDEQ refers to an "Ombudsman" form which is not identified as a discrimination complaint ... [1]

Commented [A47]: LEP and Disability Access:

This is considered a vital document. It is a necessary component of LDEQ's nondiscrimination program but is not readily available in English and not at all available in any language other than English. LDEQ must translate all vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. ... [2]

²⁰ 40 C.F.R. §7.90

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b) The Grievance Procedures will:

- (1) Clearly identify the Non-Discrimination Coordinator, including name and contact information;
- (2) Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the Grievance Procedures;
- (3) State who may file a complaint under the Grievance Procedures and describe the appropriate bases for filing a complaint;
- (4) Describe the processes available for filing complaints;
- (5) State that the preponderance of the evidence standard will be applied during the analysis of the complaint;
- (6) Contain assurances that intimidation and retaliation are prohibited and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to your Grievance Procedures in the same manner as other claims of discrimination;
- (7) Assure the prompt and fair resolution of complaints which allege violations of federal non-discrimination laws;
- (8) State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
- (9) Be reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints.

c) Within 120 days after the effective date of this Agreement, LDEQ will submit to EPA for review a draft copy of its Grievance Procedures. EPA will review the draft Grievance Procedures in accordance with Paragraph IV.C. of this Agreement. LDEQ will prominently publish in print and on its website the final Grievance Procedures in print and on its website.

Commented [DL48]: LDEQ: We note that LDEQ's upcoming 5-year strategic plan says one of the metrics of The Office of the Secretary is:

Percent of responses by Ombudsman to complaints involving public participation and environmental justice within five business days.

<https://deq.louisiana.gov/assets/docs/StrategicPlans/SPFY23-28.pdf>

However, civil rights discrimination complaints/ Grievance Procedures are not mentioned. Do you intend to include the civil rights grievance procedures as well in this metric?

Commented [A49]: Will LDEQ commit to clarifying Mr. Ward's role?

Same feedback as the last section: Identify Roger Ward's role as Nondiscrimination Coordinator along with or instead of Ombudsman.

Commented [A50]: Mr. Ward's role is not clearly explained. Although Roger is included as a possible avenue to receive complaints, his role in the process is not clear.

Commented [A51]: There is a typo in the sentence describing "who may file." As for appropriate bases, there are several bases listed that are not linked with laws. For example, T6 will not cover religion or disability, etc. There should be clarity on the federal and state laws which allow for the protected bases LDEQ lists for filing a complaint.

Commented [A52]: There is mention of informal resolution as a reason not to investigate a claim but no explanation of the formal or informal resolution process.

Commented [A53]: There was no mention of the standard applied for investigation.

Commented [A54]: Will LDEQ commit to updating its GPs so as to cover all federally prohibited forms of discrimination by EPA recipients, including retaliation and intimidation?

There is no mention of intimidation and retaliation.

Commented [A55]: The grievance must include the appropriate nondiscrimination laws and regulation. (This section does not preclude LDEQ from also including its state laws and protected bases).

Commented [A56]: LDEQ's current policy states that written notice will be provided within 120 days of the resolution of the complaint but there is no indication that complainants will be provided a description of the investigation process.

Commented [A57]: This is not explicitly stated in the grievance procedures, LDEQ what is your practice for reviewing the grievance procedures?

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3. Designation of Non-Discrimination Coordinator²¹

a) LDEQ will designate at least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination laws, who will:

- (1) Provide information to individuals internally and externally that LDEQ does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of LDEQ's programs or activities, and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7;
- (2) Provide information to individuals both internally and externally that LDEQ does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights;
- (3) Provide notice of LDEQ's grievance processes and the ability to file a discrimination complaint;
- (4) Establish a mechanism (e.g., an investigation manual) for implementation of LDEQ's Grievance Procedures to ensure that all discrimination complaints filed with LDEQ under federal non-discrimination laws and the EPA implementing regulations 40 C.F.R. Parts 5 and 7 are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for individuals with limited English proficiency and individuals with disabilities to LDEQ's programs and activities;
- (5) Track all complaints filed with LDEQ under federal non-discrimination laws, in order to identify any patterns or systemic problems;
- (6) Conduct semiannual reviews/analysis of all complaints filed with LDEQ under the federal non-discrimination laws, identified in 40 CFR Parts 5 and 7 to identify and address any patterns, systematic problems or any trends identified;
- (7) Ensure that appropriate training is provided for LDEQ staff in the processes available to resolve complaints filed with LDEQ under federal non-discrimination laws;

Commented [A58]: DELETE FROM DOCUMENT- LDEQ already designates a non-discrimination coordinator.

Commented [A59R58]: But not appropriately so. See prior comments.

Commented [A60]: Is LDEQ willing to draft and implement the following job duties for LDEQ's designated Nondiscrimination Coordinator, including ensuring his role does not have a conflict of interest with any other role for the agency?

Commented [A61]: Roger Ward is the designated Nondiscrimination Coordinator.

EPA has worked with Recipients to ensure their Nondiscrimination Coordinators have clear job descriptions that incorporate the items listed here. LDEQ can use its own job description documents to include the items listed under Roger's work as a nondiscrimination coordinator. This document is not publicly posted like the other nondiscrimination deliverables, but it is an important part of the procedural safeguards for nondiscrimination programs.

Does Roger Ward's current job description include any of these items?

²¹ 40 C.F.R. §7.85(g)

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(8) Ensure that appropriate training is provided for LDEQ staff and all relevant contractors on LDEQ's non-discrimination policies and procedures, as well as the nature of LDEQ's obligation to comply with federal nondiscrimination laws;

(9) Ensure that complainants are updated on the progress of their complaints filed with LDEQ under federal non-discrimination laws and are promptly informed as to any determinations LDEQ has made;

(10) Undertake periodic evaluations of the efficacy of LDEQ's efforts to provide services, aids, benefits, and participation in any of LDEQ's programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws.

(11) Coordinate with the LDEQ's designated Point of Contact for completion of the Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance (Form 4700-4) to ensure that an accurate Form is submitted with applications for EPA assistance.

b) The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as LDEQ's Non-Discrimination Coordinator as well as its legal advisor or representative on civil rights issues).

c) Within 90 days after the effective date of this Agreement, LDEQ will identify at least one individual who will serve as Non-Discrimination Coordinator(s) consistent with the regulatory requirements of 40 C.F.R. §5.135, §7.85(g), and §7.95(a).

d) Within 90 days of appointment of a Non-Discrimination Coordinator, LDEQ will forward to EPA proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.

4. Public Participation

a) LDEQ understands that meaningful public participation consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their questions and concerns. Therefore, LDEQ will:

Commented [A62]: For LDEQ: This new provision relates to the Form 4700-4 process.

Commented [A63]: There is no basis in law for this requirement.

Commented [A64R63]: It is ethically imperative that a Nondiscrimination Coordinator's role be separated from the role as an LDEQ legal advisor or representative. For example, you do not want the same person defending the agency to be the person providing information to complainants to file complaints against the agency. There needs to be separation for the integrity of the process. Otherwise this person may not be able to provide "fair and prompt" grievance procedure.

Commented [A65]: DELETE FROM DOCUMENT- LDEQ already has public participation procedures. Such procedures were upgraded as part of prior settlement agreements with EPA. Also, in cooperation with the Governor's Office of Emergency Preparedness, the State of Louisiana, including the LDEQ, has contingencies in place for the event of an emergency.

Commented [A66R65]: Will LDEQ commit to developing public participation plan/policy/procedures that are consistent with the civil rights requirements (accessible, available to the public, etc.)? See also guidance at: https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf

During our last call, Roger Ward acknowledged that LDEQ does not have a Public Participation Plan but is willing to draft and implement one. Is LDEQ willing to draft and implement a Public Participation Plan in accordance with the following provisions, prominently post, and ensure accessibility for individuals with LEP and individuals with disabilities?

Resending Guidance:
<https://www.federalregister.gov/documents/2006/03/21/06-2691/title-vi-public-involvement-guidance-for-epa-assistance-recipients-administering-environmental>

Commented [A67]: Prominent Posting and Accessibility: Will DEQ commit to publishing on its website public participation plan/policy procedures that 1) Are accessible to persons with LEP, 2) persons with disabilities 2) that the plan/policy/procedures/ are implemented in a non-discriminatory manner?

When the Public Participation Plan is drafted, LDEQ should include it on a "Nondiscrimination" page for all of its documents.

The Nondiscrimination Page should include all relevant information for the public including: 1. Notice of Nondiscrimination (including Nondiscrimination Coordinator information), 2. Grievance Procedures, 3. ... [3]

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- (1) Ensure that its public involvement process is available to all persons regardless of race, color, national origin, disability, age, sex, or prior exercise of rights protected, or opposition to actions prohibited, by 40 C.F.R. Parts 5 and 7 and the federal non-discrimination laws;
- (2) Ensure that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner;
- (3) Develop, publicize, and implement written public participation procedures (consistent with the federal civil rights laws and the Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)²²), that include implementation of the following steps for effective public participation that is accessible to all persons regardless of race, color, national origin (including LEP), disability, age, and sex each time LDEQ engages in a public participation or public involvement process:
 - (4) Develop a description of the relevant/affected community based on the action being considered (including demographics, history, and background, for example/such as, percentage of the service area that is minority, has less than a high school education, has members of households who speak a language other than English and/or speak English less than very well, has a history of filing complaints, has an inability to access traditional communication channels or the internet);
 - (5) Provide a contact list for relevant staff members on LDEQ's website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
 - (6) Develop a list of past and present community concerns (including any complaints filed under the federal non-discrimination laws), and actions undertaken in response to such concerns;
 - (7) Develop and implement a detailed plan of action (including outreach activities) LDEQ will take to address concerns raised by the public;

²² 71 Fed. Reg. 14207 (March 21, 2006), available at https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf

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- (8) Develop and implement a contingency plan for unexpected events that may impact public meetings or other public participation avenues;
 - (9) Identify location(s) where public meetings will be held (considering the availability and schedules of public transportation), and ensure that the location(s) will allow for meaningful participation/involvement by individuals with LEP and individuals with disabilities;
 - (10) Develop and maintain a list of contact names for obtaining reasonable accommodations at no cost for individuals with disabilities and language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;
 - (11) Develop and maintain a list of appropriate local media contacts (based on the cultural and linguistic needs of the community).
- b) LDEQ will, during times of national, state, or local emergency, ensure that any public meetings occurring virtually are held in such a manner as to ensure the meaningful participation/involvement of individuals with limited English proficiency and individuals with disabilities. LDEQ may seek technical assistance from EPA about how it may achieve this outcome.
- c) LDEQ will ensure that a Public Participation Plan is developed and prominently highlighted on the LDEQ website, which will explain how residents can participate in LDEQ's programs, activities, and services. LDEQ will also solicit and consider public input into development of the Public Participation Plan. This plan will also be posted in other publicly accessible locations such as local public libraries, and LDEQ will ensure that it incorporates the following elements:
- (1) A description of how LDEQ will meaningfully engage the public prior to and during LDEQ programs, activities, and services (e.g. how the public can request to participate during LDEQ public engagement opportunities such as public hearings, townhalls, etc., including criteria on how these events are determined);

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- (2) A description of what methods LDEQ will implement to ensure the public can access publicly available information and documents regarding LDEQ programs, activities, and services, which includes providing clear instructions for public users on how and where to access LDEQ's electronic and hardcopy documents and information.
- d) The Non-Discrimination Coordinator(s) will ensure that appropriate LDEQ staff and all relevant contractors receive training in best practices related to public involvement in all processes undertaken by LDEQ that include public engagement.
- e) LDEQ will provide a mechanism for residents to access relevant hard copy information in a centralized public location near to a proposed LDEQ activity (e.g. proposed health report or study) in addition to providing the public with access to internet and digitally provided information relating to that activity;
- f) LDEQ will provide a mechanism for obtaining public feedback and answering inquiries about any information regarding a LDEQ activity or public health issue;
- g) Within 120 days of the effective date of this Agreement, LDEQ will prepare a draft copy of its Public Participation Plan(s). LDEQ will submit its draft Public Participation Plan(s), including a translated Public Participation Plan(s) in all appropriate languages, for public comment for thirty days. After the public comment period ends, LDEQ will review comments and finalize the Public Participation Plan(s) within 30 days and submit it to EPA for review in accordance with Paragraph IV.C. of this Agreement. Within 30 days of EPA's review, LDEQ will review and incorporate comments and will publish the final Public Participation Plan(s), translated in all appropriate languages, on its website and in print.

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h) Within one year after the effective date of this Agreement, the Non-Discrimination Coordinator(s) will coordinate and host regional panels for each of the following parishes: St. John the Baptist Parish, St. James Parish, Ascension Parish, East Baton Rouge Parish, West Baton Rouge Parish, Iberville Parish, and St. Charles Parish. These panels will include representatives from communities affected by environmental and human health risks, and possibly a facilitator, to gather information from affected community members, including any expressions of community concerns, experiences, engagement needs and requests. LDEQ will prominently advertise requests for participation on these regional panels to interested community members and will publish a summary of the discussions, including recommendations for actions.

5. LDEQ Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)²³

Commented [A68]: DELETE FROM DOCUMENT- LDEQ has had a LEP policy in place since 2007. Policy was previously presented EPA for review during prior Title VI complaint settlement processes. There has been no change in Title VI law since that time, so LDEQ's position is that it's LEP policy is adequate. LDEQ's LEP Policy can be found on its website. See [LEP-Memo-McDaniel-2007.pdf \(louisiana.gov\)](#) The LEP Policy also is accessible on LDEQ's EDMS. See <https://edms.deq.louisiana.gov/app/doc/view?doc=13636014>

Commented [A69R68]: Based on my evaluation of LDEQ's website and the nondiscrimination documents it currently has available, LDEQ is not implementing the LEP memo shared in its comment. The available nondiscrimination documents and entire LDEQ website are only accessible in English and do not have any information about translation or interpretation in or into any other language.

The 2007 Memorandum contemplates that there will be a formal plan memorialized but it has not been updated, a formal plan was not drafted, and the document in its current form is not being implemented. LDEQ must create a formal Language Access Plan (LAP) and LDEQ must implement the LAP it creates. LAP plans must be updated routinely to appropriately reflect changing population and language needs. Louisiana's language needs now are different than their language needs in 2007, but there is no indication in the plan that LDEQ is routinely evaluating the public's language access needs.

Commented [A70]: Will LDEQ commit to draft, and implement a LAP in accordance with the provisions below, prominently post, and ensure accessibility for individuals with LEP (in all appropriate languages) and individuals with disabilities? Also, see guidance at: https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf

²³ See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin.) *Lau v Nichols* 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin.) On June 25, 2004, EPA issued Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Recipient Guidance). The LEP Recipient Guidance clarifies recipients' existing legal obligations to provide meaningful access to limited English proficient persons in all programs and activities that receive federal financial assistance from EPA. The LEP Recipient Guidance also provides a description of the factors recipients should consider in fulfilling their responsibilities to persons with limited-English proficiency to ensure meaningful access to recipients' programs and activities and the criteria EPA uses to evaluate whether recipients are in compliance with Title VI and the Title VI implementing regulation. LEP Recipient Guidance, 69 FR 35602, 35606-35607 (June 25, 2004), at <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>; 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

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a) LDEQ will conduct an appropriate analysis as described in EPA's LEP Guidance, to identify the appropriate language groups and determine what language services or mix of language services LDEQ needs to provide (e.g., interpreters and translators), to ensure that individuals with limited-English proficiency can meaningfully participate in LDEQ's programs and activities.

Commented [A71]: EPA Notes that: LDEQ's website includes no information – whether environmental or civil rights information, in any language other than English. Also, the “LEP Memo” noted by LDEQ dates back to 2007 and, to be relevant, these plans must be periodically revised.

b) LDEQ will develop, publicize, and implement a written Language Access Plan to ensure meaningful access to all LDEQ services, programs and activities for individuals with LEP, at no cost to those individuals. LDEQ shall also solicit and consider public input into development of the Language Access Plan. LDEQ will:

(1) Translate vital documents²⁴ of general interest into prominent languages for individuals with LEP who are served or likely to be encountered by LDEQ's programs and activities;

Commented [A72]: LDEQ's Memo contemplates translating vital documents, but EPA cannot find any translated documents or evidence of implementation of the plan or execution of a four-factor analysis.

(2) Translate vital documents of individual interest to a particular individual with LEP or group individuals with LEP (e.g., an individual or group of individuals with LEP wishing to file a grievance or complaint);

(3) Provide for simultaneous oral interpretation of live proceedings (e.g., town hall meetings and public hearings) in prominent languages, and the ability for individuals with LEP to participate in those proceedings to the same extent as persons with English proficiency can participate; and

(4) Provide for simultaneous interpretation of proceedings, meetings, etc., for an individual LEP person(s) participating in LDEQ programs or activities (e.g., an individual with LEP wishing to provide comments during a hearing).

Commented [A73]: The memo briefly contemplates some interpretation services – but not in a way that ensures meaningful access. Also, EPA can find no evidence of any interpretation practice being implemented.

²⁴ Whether or not a document (or the information it disseminates or solicits) is “vital” may depend on the importance of the program, information, encounter or service involved, and the consequence to individual(s) with the LEP if the information in question is not provided accurately or in a timely manner. (See EPA's LEP Recipient Guidance).

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c) Within 120 days of the effective date of this Agreement, LDEQ will prepare a draft copy of its Language Access Plan. LDEQ will then submit its draft Language Access Plan, including a translated Language Access Plan in all appropriate languages, for public comment for thirty days. After the public comment period ends, LDEQ will review comments and finalize the Language Access Plan within XX days and submit it to EPA for review in accordance with Paragraph IV.C. of this Agreement. Within 30 days of EPA's review, LDEQ will review and incorporate comments and LDEQ will publish the final Language Access Plan, translated in all appropriate languages, on its website and in print.

6. LDEQ Plan to Ensure Meaningful Access to Programs and Activities for Persons with Disabilities²⁵

a) LDEQ will develop, publicize and implement a Disability Access Plan to ensure meaningful access to all LDEQ programs, services and activities for individuals with disabilities.²⁶ As part of the development, LDEQ shall also solicit and consider public input into development of the Disability Access Plan.

b) LDEQ will provide, at no cost, auxiliary aids and services to individuals with disabilities, (including, but not limited to, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication and an equal opportunity to participate fully in benefits, activities, programs, and services provided by LDEQ in a timely manner in such a way as to protect the privacy and independence of the individual.

c) LDEQ will ensure that its facilities and other facilities utilized by LDEQ (e.g. if LDEQ holds a public hearing at a school or recreational center) are physically accessible to, individuals with disabilities.

d) Within 120 days of the effective date of this Agreement, LDEQ will submit to EPA for review a draft copy of its Disability Access Plan. EPA will review the draft Disability Access Plan in accordance with Paragraph IV.C. of this Agreement. LDEQ will prominently publish in print and on its website the final Disability Access Plan.

Commented [A74]: DELETE FORM DOCUMENT- LDEQ has an existing plan to ensure meaningful access to programs and activities for persons with disabilities. See https://intranet.deq.louisiana.gov/IntranetDEQ/Portals/0/Forms/Policies_Procedures/1041-16.pdf Further, LDEQ has added a link entitled "ADA and State of Louisiana Disability Resources" to its website. Louisiana has a Statewide ADA Coordinator through its Division of Administration. See <https://doa.louisiana.gov/doa/office-of-state-ada-coordinator/>

Commented [A75R74]: LDEQ I was unable to retrieve any information about LDEQ's Disability Policy in the links provided. There may be a typo in the first link, as it was broken and inaccessible.

I independently searched the LDEQ website but I was unable to identify an LDEQ disability policy.

Commented [A76]: Is LDEQ willing to draft and implement a Disability Policy in accordance with the provisions below, prominently post, and make accessible to individuals with LEP and individuals with disabilities? See also <https://www.epa.gov/system/files/documents/2023-01/Disability%20Nondiscrimination%20Sample%20TA%20Policy.pdf>

Commented [A77]: Is LDEQ willing to make the additions outlined below to the Notice of Nondiscrimination, prominently post a link on the homepage, and make this and the other required nondiscrimination documents accessible for individuals with LEP and individuals with disabilities?

See also the "Checklist" guidance which includes sample language for the Notice, at https://www.epa.gov/sites/default/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf

²⁵ See 40 C.F.R. §§ 7.45 - 7.75; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a). Section 504, and EPA's implementing regulation prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

²⁶ See Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf

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7. **Training**

a) Within 60 days of the EPA approval of all other deliverables noted throughout the Agreement, LDEQ will ensure all its staff and relevant contractors have training on federal non-discrimination obligations and all plans, policies and procedures created and implemented as part of this Agreement. LDEQ may request assistance from EPA for any of the training required in this Agreement, including having the training be provided by EPA staff. LDEQ should consider the inclusion of community representatives as a part of the staff training. Following the training, LDEQ will provide EPA with a copy of any training materials, a list of staff who received the training and the dates the training was provided.

b) Within 30 days of the initial training implemented following subsection 1 above, LDEQ will forward to EPA for review a draft plan for ensuring that such training is also a routine part of the on-boarding process for new employees and is given regularly as refresher training to all employees and relevant contractors. EPA will review the draft training in accordance with Paragraph IV.C. of this Agreement. LDEQ will forward a final copy of the training plan to EPA and implement the above plan.

Commented [A78]: Is LDEQ willing to complete the above provisions in Section III and train all staff on the nondiscrimination materials as required in the provisions below?

Commented [A79]: What kind of non-discrimination does EPA envision. Most training that the State of Louisiana offers to employees is developed and made available via its Comprehensive Public Training Program, most of which is online self-directed study. Also, not all LDEQ staff has interaction with the regulated community. (For example, mail room personnel, student workers). Why would such training be needed?

Commented [A80R79]: LDEQ, these trainings must be conducted for all existing staff, relevant contractors, on an annual basis and all new and onboarded staff. Many recipients utilize their existing training systems to input and require the nondiscrimination training on an annual basis. When we get to this point, EPA can provide additional technical assistance and training materials for implementing this Section III.G. Also, EPA may be able to assist in delivering the training.

Commented [A81]: Reinstating all of these provisions.

IV. **GENERAL CONSIDERATIONS**

A. In consideration of LDEQ's implementation of commitments and actions described in Sections II and III of this Agreement, EPA will end its investigation of Complaint No. 02R-22-R6 and not issue a decision containing findings on the merits of the complaint.

B. EPA will monitor compliance with the commitments in Sections II and III of this Agreement, as appropriate, to ensure they are fulfilled. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting completion of the commitments, closure of its monitoring actions and closure of Complaint No. 02R-22-R6 as of the date of that letter.

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C. EPA will review and provide feedback about any documentation submitted by LDEQ demonstrating completion of each commitment and will provide an assessment, to include verbal and/or written feedback, as to whether the documentation satisfies the commitment within 30 days of receipt of each such submission. Following that, should there be negotiations and/or edits needed to address EPA's comments, the parties will resolve those within 30 days and LDEQ will finalize and submit the deliverable within this 30-day period. This 30-day period for negotiations and edits may be extended if agreed to in writing by both the Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights, EPA, and the Secretary of LDEQ.

D. EPA will, upon request, provide technical assistance to LDEQ regarding any of the civil rights obligations previously referenced. This may be in written or oral form.

V. COMPUTATION OF TIME AND NOTICE

A. As used in this Agreement, "day" will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next working day.

B. Service of any documents required by this Agreement may be made by electronic service as outlined below. Documents forwarded by email for review are to be sent in native format for draft documents and PDF format for documents intended to be final.

C. Electronic documents submitted by LDEQ to the EPA via email will be sent to Lilian Dorka at Dorka.Lilian@epa.gov, Anhthu Hoang at Hoang.Anhthu@epa.gov, and Zahra Khan at Khan.Zahra@epa.gov.

D. Documents submitted by the EPA to LDEQ shall be sent via email to Courtney Burdette at Courtney.Burdette@la.gov, Jill Clark at Jill.Clark@la.gov, and Roger Ward at Roger.Ward@la.gov.

Commented [A82]: Contact information inserted.

E. Either EPA or LDEQ may change the persons identified above in Paragraphs V.C. and V.D. by providing written notice of such change.

VI. EFFECT OF THE AGREEMENT

A. LDEQ understands that, if necessary, EPA may visit LDEQ, interview staff, and request such additional reports or data as are necessary for EPA to determine whether LDEQ has fulfilled the terms of this Agreement.

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B. LDEQ understands that the EPA will not close its monitoring of this Agreement until EPA determines that LDEQ has fully complied with this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.

C. With the exception of the provisions of Paragraphs IV.C. and V.E., if either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to LDEQ's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Secretary of LDEQ or their designee and the Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights, EPA.

D. This Agreement constitutes the entire Agreement between LDEQ and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by LDEQ and EPA in accordance with the provisions of Paragraph VI.C. above.

E. This Agreement does not affect LDEQ's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The individuals signing this Agreement represent that they are authorized to execute this Agreement and legally bind the parties to the Agreement.

On Behalf of the Louisiana Department of Environmental Quality:

Roger W. Gingles, Secretary
Louisiana Department of Environmental Quality

(Date)

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On behalf of the Office of External Civil Rights Compliance, Office of Environmental Justice
and External Civil Rights, U.S. Environmental Protection Agency:

Lilian S. Dorka
Deputy Assistant Administrator for Civil Rights
Office of Environmental Justice and External Civil Rights

(Date)

DRAFT

Page 30: [1] Commented [A46]**Author**

Prompt and fair Grievance Procedures (GPs), Prominent Posting, and Accessibility: Will LDEQ commit to 1) revising its current GPs to reflect critical information outlined below, 2) post it prominently on its webpage, and 3) ensure it is accessible to persons with LEP and persons with disabilities? See also <https://www.epa.gov/system/files/documents/2023-01/Form%204700-4%20Technical%20Assistance%20-%20Grievance%20Procedures.pdf>

LDEQ's GPs are not complete, prominently posted or accessible. (LDEQ should create one "Nondiscrimination" page for all of its documents.)

The Nondiscrimination Page should include all relevant information for the public including: 1. Notice of Nondiscrimination (including Nondiscrimination Coordinator information), 2. Grievance Procedures – clearly spelling out basis for discrimination, who will investigate, etc. 3. Complaint Forms – LDEQ refers to an "Ombudsman" form which is not identified as a discrimination complaint form, does not ask questions related to "discrimination", and thus, is confusing. 4. Language Access Plan, 5. Public Participation Plan.

Page 30: [2] Commented [A47]**Author**

LEP and Disability Access:

This is considered a vital document. It is a necessary component of LDEQ's nondiscrimination program but is not readily available in English and not at all available in any language other than English. LDEQ must translate all vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The webpage where this document is included does not have any information or accessibility aid for individuals with disabilities.

Page 33: [3] Commented [A67]**Author**

Prominent Posting and Accessibility: Will DEQ commit to publishing on its website public participation plan/policy procedures that

- 1) Are accessible to persons with LEP, 2) persons with disabilities 2) that the plan/policy/procedures/ are implemented in a non-discriminatory manner?**

When the Public Participation Plan is drafted, LDEQ should include it on a "Nondiscrimination" page for all of its documents.

The Nondiscrimination Page should include all relevant information for the public including: 1. Notice of Nondiscrimination (including Nondiscrimination Coordinator information), 2. Grievance Procedures, 3. Complaint Forms, if used, 4. Language Access Plan, and 5. Public Participation Plan.

Exhibit 83

St. John, Joseph

From: Courtney Burdette <Courtney.Burdette@LA.GOV>
Sent: Friday, June 9, 2023 3:32 PM
To: Dorka, Lilian (she/her/hers)
Cc: Payne, James (Jim); Scott, Ronald; Isales, Daniel; Khan, Zahra; Hoang, Anhthu; O'Lone, Mary; Rhodes, Julia (she/her/hers); Seidemann, Ryan; McGuire, James; Stephen Russo; Kimberly Sullivan; McKinney, Cheryl; Moncrieffe, Marcia; Bates, Warren; Montegut, Ryan; David McCay; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; St. John, Joseph; Tim.Hardy@bswllp.com; Jones, Jasimiel; Celena Cage; Andrews, Suzanne; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Schoellkopf, Lynde (she/her/hers); Roger Ward (DEQ)
Subject: [WARNING: UNSCANNABLE EXTRACTION FAILED]Re: COURTNEY BURDETTE for LDEQ: Continuation of Informal Resolution Agreement Process for EPA Complaint Nos. 01R-22 R6, and 04R-22-R6
Attachments: 6.9.2023 LDEQ redline 2023.05.18 draft 2 IRA 01R-22-R6 and 04R-22-R6 to LDEQ (1).docx

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please find attached LDEQ's edits to the Community Meetings, Scientific Integrity, Risk Communication, Air Emissions Monitoring, and Actions Related to Denka portions of the draft IRA. We are reviewing the other portions of the IRA and intend to provide a response soon.

Thank you,
Courtney

From: Dorka, Lilian (she/her/hers) <Dorka.Lilian@epa.gov>
Sent: Thursday, June 1, 2023 1:16:14 PM
To: Courtney Burdette
Cc: Payne, James (Jim); Scott, Ronald; Isales, Daniel; Khan, Zahra; Hoang, Anhthu; O'Lone, Mary; Rhodes, Julia (she/her/hers); Seidemann, Ryan; McGuire, James; Stephen Russo; Payne, James (Jim); Kimberly Sullivan; McKinney, Cheryl; Moncrieffe, Marcia; Bates, Warren; Montegut, Ryan; David McCay; Neal Elliott; Murrill, Elizabeth; Bliss Higgins; StJohnJ@ag.louisiana.gov; Tim.Hardy@bswllp.com; Jones, Jasimiel; Celena Cage; Andrews, Suzanne; Jill Clark; Brungard, Morgan; Freel, Angelique; John B. King; Carroll Devillier; Danielle L. Borel; Schoellkopf, Lynde (she/her/hers)
Subject: RE: COURTNEY BURDETTE for LDEQ: Continuation of Informal Resolution Agreement Process for EPA Complaint Nos. 01R-22 R6, and 04R-22-R6

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Thank you, Courtney for your quick response. With respect to LDEQ's redline of EPA's draft IRA, we are certainly willing to consider extending the response date to June 9th. However, in light of the very tight timeframe for resolving this case by July 11, 2023, please let me know today whether the LA Department of Justice will need to approve LDEQ's execution of the Informal Resolution Agreement between EPA and LDEQ.

Thanks so much for your attention to this matter.

Lilian

PS: With respect to LDEQ's response to our Request for Information, the case team will meet to discuss what is needed most urgently, and to which we do not have access, and propose some alternative timeframes asap.

Lilian Sotolongo Dorka

Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency

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Pronouns: she/her/ella

Hablo español

From: Courtney Burdette <Courtney.Burdette@LA.GOV>

Sent: Thursday, June 1, 2023 12:50 PM

To: Dorka, Lilian (she/her/hers) <Dorka.Lilian@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>; Scott, Ronald <Scott.Ronald@epa.gov>; Isales, Daniel <Isales.Daniel@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Rhodes, Julia (she/her/hers) <Rhodes.Julia@epa.gov>; Seidemann, Ryan <SeidemannR@ag.louisiana.gov>; McGuire, James <McGuire.James@epa.gov>; Stephen Russo <Stephen.Russo@LA.GOV>; Payne, James (Jim) <payne.james@epa.gov>; Kimberly Sullivan <Kimberly.Sullivan@LA.GOV>; McKinney, Cheryl <McKinneyC@ag.louisiana.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Bates, Warren <BatesW@ag.louisiana.gov>; Montegut, Ryan <MontegutR@ag.louisiana.gov>; David McCay <David.McCay@LA.GOV>; Neal Elliott <Neal.Elliott@LA.GOV>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Bliss Higgins <Bliss.Higgins@la.gov>; StJohnJ@ag.louisiana.gov; Tim.Hardy@bswllp.com; Jones, Jasimiel <JonesJ@ag.louisiana.gov>; Celena Cage <celena.cage@la.gov>; Andrews, Suzanne <Andrews.Suzanne@epa.gov>; jill.clark@la.gov; Brungard, Morgan <BrungardM@ag.louisiana.gov>; Freel, Angelique <FreelA@ag.louisiana.gov>; John B. King <John.King@bswllp.com>; Carroll Devillier <Carroll.Devillier@bswllp.com>; Danielle L. Borel <Danielle.Borel@bswllp.com>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>

Subject: RE: COURTNEY BURDETTE for LDEQ: Continuation of Informal Resolution Agreement Process for EPA Complaint Nos. 01R-22 R6, and 04R-22-R6

Lilian,

LDEQ remains willing to continue informal resolution negotiations. LDEQ does intend to provide a response to EPA's recent redline draft. It is unlikely that LDEQ's response will be complete by your requested June 2 date; however, LDEQ will work to provide you with a redline by June 9.

Regarding the request for information, LDEQ is in the process of reviewing your request. However, given the extraordinarily voluminous scope of the request, LDEQ is unable to prepare a response within the allotted 30-day timeframe. To assist your office in its investigation, and consistent with Section 2.4(2) of EPA's Title Vi Case Resolution Manual dated January 2021, please be advised that LDEQ grants your office access to all LDEQ books, records, accounts, and other sources of information, including its facilities, as may be pertinent to ascertain compliance with EPA's nondiscrimination regulation. LDEQ maintains a Public Records Center at 602 N. 5th Street, Baton Rouge, Louisiana for your convenience. The Public Records Center is open from 8:00 A.M. to 4:30 P.M. Monday through Friday, except for holidays. Most LDEQ records are also accessible through LDEQ's Electronic Document Management System (EDMS) at <https://www.deq.louisiana.gov/page/edms>.

Thank you,
Courtney

Courtney J. Burdette

Executive Counsel

Louisiana Department of Environmental Quality Legal Division P.O. Box 4302 Baton Rouge, LA 70821-4302
(225) 219-3985 Office Main

From: Dorka, Lilian (she/her/hers) <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>
Sent: Thursday, June 1, 2023 8:38 AM
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Subject: COURTNEY BURDETTE for LDEQ: Continuation of Informal Resolution Agreement Process for EPA Complaint
Nos. 01R-22 R6, and 04R-22-R6
Importance: High

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Dear Courtney,

I am writing to inquire whether LDEQ wants to continue negotiations to informally resolve EPA Complaints Nos. 01R-22-R6 and 04R-22-R6. If by COB June 2nd we do not receive your redline of the proposed draft Informal Resolution

Agreement we sent to you on May 18th, we will interpret that to mean you are no longer interested in pursuing the informal resolution agreement process.

In addition, we want to ask about LDEQ's response to EPA's Request for Information. Your response was due back to EPA by May 26th. Please let us know when we can expect your response.

Thanks for your prompt attention to this matter.

Lilian

Lilian Sotolongo Dorka

Deputy Assistant Administrator for External Civil Rights Office of Environmental Justice and External Civil Rights U.S.
Environmental Protection Agency

202-564-9649 - Office

202-695-9888 – Cell

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Hablo español

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Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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05/18/2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT
between the
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA COMPLAINTS NO. 01R-22-R6 AND 04R-22-R6

C. Community Meetings

1. Within ~~60-120~~ days from the effective date of this Agreement, LDEQ will host four community meetings to discuss the commitments made by LDEQ in this Agreement as specified below:

- a) One meeting will be held in St. John the Baptist Parish as close to Reserve as possible;
- b) One meeting will be held in St. James Parish as close to Welcome as possible; and
- c) Two additional meetings will be held in other Parishes within the Industrial Corridor. East Baton Rouge Parish with a virtual attendance option.

2. At least 15 days in advance of the meeting in St. John the Baptist Parish and the meeting in St. James Parish, LDEQ will mail notice of the date, location, and time of the public meeting to the residents persons on Reserve, Louisiana the parish on the LDEQ public notice mailing list for the respective parishes, and post it on LDEQ's public notice webpage and website calendar.

3. At least 15 days in advance of the meeting in St. James Parish, LDEQ will mail notice of the date, location, and time of the public meeting to the residents of Welcome, Louisiana the parish on the LDEQ public notice mailing list and post it on LDEQ's public notice webpage and website calendar.

Commented [OM1]: LDEQ: EPA is willing to provide technical assistance as well as professional facilitation for these meetings.

Commented [A2]: Public venues do not always accommodate participation by virtual modes. If a meeting is held at LDEQ Galvez Conf Center, that meeting could also be virtual.

Commented [OM3R2]: Is LDEQ saying the only virtual meeting it could hold is in LDEQ Galvez Conf Center? You can't host a virtual meeting anywhere else in the Corridor? If not, then the 3rd should be at the Galvez Conf. Center which we hope is in Baton Rouge. LDEQ should propose criteria for selecting the 4th location, maybe the most impacted area left or location that is not far from several Parishes.

Commented [A4]: Notice will be by LDEQ public notice webpage and website calendar.

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~~4.3.~~ At least 15 days in advance of the meetings in paragraph II. C. 1. c., LDEQ will post notice of the date, location, and time of the public meetings on its public notice webpage and website calendar.

~~5.4.~~ LDEQ will ensure that the selection of the meeting locations, dates, and times will consider the availability and schedules of public transportation and consideration of residents' work hours; and ensure that the location(s), dates, and times Meetings will be held on Monday, Tuesday, Wednesday or Thursday evenings to commence at 6:00 p.m. and will allow for meaningful participation/involvement by individuals with limited English proficiency (LEP) and individuals with disabilities.

Commented [CB5]: This language is overly vague. LDEQ wants the IRA to be more specific as to the scheduling of the community meetings.

~~6.~~ EPA is available to provide technical assistance to LDEQ to ensure the meetings are meaningfully accessible to all residents.

Commented [A6]: This reference (II.A.1) is misplaced. Also, these meetings are to communicate elements of the IRA, not to communicate risk from air toxics.

D. Scientific Integrity and Risk Communication

~~1.~~ Within 30 days of the effective date of this Agreement, LDEQ will appoint a Scientific Integrity Official to champion scientific integrity throughout LDEQ. The Scientific Integrity Official will provide oversight for the implementation of the Scientific Integrity Policy at LDEQ and is available to address any questions or concerns regarding this policy and its implementation.

Commented [OM7R6]: Agreed.

~~2.1.~~ Within 150 days one (1) year of the effective date of this Agreement, LDEQ will submit a draft adopt a Scientific Integrity Policy to EPA to demonstrate that LDEQ will require assure that the decision-making process is supported and driven by best available science, and in accordance with guidance of reputable scientific agencies, including agencies such as CDC, NIH, and ATSDR. EPA recommends that LDEQ model its Scientific Integrity Policy on EPA's Scientific Integrity Policy found at https://www.epa.gov/sites/default/files/2014-02/documents/scientific_integrity_policy_2012.pdf. EPA will review the draft Policy in accordance with Paragraph IV.C. of this Agreement. LDEQ will provide confirmation of adoption of the policy to EPA.

Commented [OM8]: LDEQ: These are the same revised Scientific Integrity provisions given to LDH. This section no longer includes the requirement for more than one Scientific Integrity Official (SIO) and the council of SIOs. We accepted some of your proposal regarding risk communication from the provision you suggested in lieu of the Scientific Integrity (SI) & Risk Communication sections; however, we have kept the SI provisions regarding an SIO, a written policy, & training.

Commented [CB9R8]: LDEQ will agree to EPA's suggestion to adopt a written policy.

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~~3.2. The LDEQ will issue its Scientific Integrity Policy within 20 days of final approval by EPA in accordance with Paragraph IV.C. of this Agreement. The Policy will apply to all LDEQ employees, including scientists, managers, and political appointees, who will follow this policy when engaging in, supervising, managing, or influencing scientific activities; communicating information in an official capacity about LDEQ scientific activities; and utilizing scientific information in making LDEQ policy or management decisions relevant to science and health. In addition, all contractors, grantees, collaborators, and student volunteers who engage in scientific activities are expected to uphold the standards established by LDEQ Scientific Integrity policy.~~

~~4.3. Within 90 days of the adoption of LDEQ's Scientific Integrity, LDEQ will provide EPA with a copy of any training materials, the dates the training was provided to current LDEQ employees, and confirmation that the training has been added to new employee training requirements.~~

E. Risk Communication

1. Within ~~60 days~~ 270 days of the effective date of this Agreement, LDEQ will ~~develop or acquire a risk communication training module adopt EPA's SALT Framework: A Process Framework to Guide Risk Communication (<https://www.epa.gov/risk-communication/salt-framework>) or a comparable risk communication framework (LDEQ's Risk Communication Framework)~~ and will provide confirmation of the adoption of the ~~framework training module~~ to EPA.

2. Within ~~120-180~~ days of the adoption of LDEQ's Risk Communication ~~Framework Training Module~~, LDEQ will provide EPA with a copy of any training materials, ~~the dates the training was provided to current LDEQ employees,~~ and confirmation that the training has been added to ~~new-the~~ employee training requirements.

F. Air Emissions Monitoring

1. ~~For facilities that currently or propose to emit EtO LDEQ will incorporate into new permits or permit renewals a three-year fenceline monitoring requirement for those pollutants.~~

2. LDEQ will seek to extend the total monitoring period for the Temporary Located Community (TLC) monitoring station referenced in St. James Parish paragraph I. N. above for an additional two years ~~(March 2024 through February 2026)~~ above, through grant funding, permitting, or enforcement activities.

Commented [OM10]: LDEQ: We adopted LDEQ's proposed language regarding a training module and no longer specifically require adoption of EPA's SALT framework.

Commented [OM11]: LDEQ: The rule will not be finalized for a while and its final form is unknown. This provision provides for monitoring now. We have included a provision in the Background about the Denka chloroprene monitoring network which includes fenceline monitors. Would LDEQ commit to deploy the TLC or MAMLs to monitor EtO and other pollutant emissions levels (e.g., H2S) of concern to residents in St. James, St. John the Baptist, and other communities near EtO emitters for meaningful periods of time in the meanwhile?

Commented [CB12R11]: LDEQ cannot require fenceline monitoring for EtO for all emitters without rulemaking authority. See comments below on TLC and MAML community monitoring.

Commented [CB13]: Funding has been delayed due to EPA approval process. Timing of commencement will depend on receipt of grant funds.

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~~3.~~ LDEQ will conduct at least three planned community monitoring events in the Industrial Corridor each year for the next three fiscal years (July 1, 2023, through June 30, 2026) using its Mobile Air Monitoring Labs (MAML).

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Commented [CB14]: LDEQ has requested funding from EPA to equip MAMLS to monitor EtO, but the funding has not yet been approved.

~~4.3.~~ LDEQ will conduct a public engagement process prior to making decisions that impact the placement, length of time the TLC and MAML monitors will be in place, and monitoring parameters (e.g., NO₂, PM_{2.5}, H₂S, SO₂, Methane/NMOC, THC, VOCs including HAP and ozone precursors) for the monitoring described in paragraph G. 2 and 3 above. LDEQ will make the monitoring results from planned TLC or MAML community monitoring events publicly available through LDEQ's website.

Commented [OM15]: LDEQ: Inserted to address resident concerns raised on several occasions about the location of monitors, pollutants LDEQ chose not to monitor, and the duration.

~~5.4.~~ LDEQ commits to apply for Federal funding opportunities that may become available for air emissions monitoring in any of the Parishes within the Industrial Corridor. Funding opportunities include not only those offered to State agencies, but also those offered to State agencies in collaboration with community groups.

Commented [CB16]: LDEQ typically does not announce MAML monitoring events in advance. For the TLC monitor, the grant application has already been approved and must be done in accordance with grant requirements.

Commented [CB17]: LDEQ cannot commit in advance to apply for any number of uncertain future grant opportunities.

~~6.5.~~ Beginning within 180 days from the effective date of this Agreement and every 180 days thereafter, LDEQ will provide updates to EPA on its efforts to seek appropriate funding. Those updates shall include the specific steps that LDEQ has taken to secure funding, including designating a person responsible for identifying and applying for any appropriate funding or program identifying potential funding sources, and the status of any applications for those funding sources.

~~7.6.~~ This provision remains in effect for three years from the effective date of this Agreement.

G. Actions to Related to Denka

1. LDEQ will issue the proposed Title V renewal permits for public comment for the Denka Chloroprene Unit, Neoprene Unit, and HCl Recovery Unit within 90-180 days of the earlier of the following: final court decision(s) related to the pending USDOJ ISE complaint and Denka lawsuit regarding the USEPA chloroprene Inhalation Risk Factor, including any subsequent appeals, final and effective 40 CFR Part 63 regulations to revise the Group 1 Polymers and Resins NESHAP and Hazardous Organic NESHAP to incorporate a current residual risk and technology review, after the conclusion of the CIA in section H. B. above. The proposed renewal permits will incorporate the following permit revisions:

Commented [CB18]: LDEQ changed this language from "later of" to "earlier of".

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Informal Resolution Agreement
EPA Complaints No. 01R-22-R6 and 04R-22-R6

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- a) Emission limits for chloroprene based on the controls and emission reduction projects implemented under the 2017 LDEQ Administrative Order on Consent (AOC);
- b) Any additional emission reductions achieved by Denka since implementation of the 2017 AOC;
- c) Compliance assurance measures, which may include emissions testing, emissions and/or operating parameter monitoring, recordkeeping and reporting to demonstrate ongoing compliance with chloroprene emission limits;
- d) Any planned or ongoing emission reduction projects or changes to work practice standards required by final and effective enforcement actions or agreed to under any settlement or administrative order, with the associated compliance schedule;
- e) All federally applicable requirements (as defined at LAC 33.III.502), including applicable technology-based emission limitations, work practice standards, and monitoring requirements;
- f) Any final and effective revisions to any federally applicable requirement with future compliance dates; and

~~g) Any recommendations to LDEQ from the final CIA implementation plan in paragraph II. B. related to the permits for the Denka facility.~~

2. LDEQ's public notice and comment process on the Denka Title V permit renewals will follow LDEQ's Title V public participation requirements and will meet any applicable procedural requirements under the Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to commitments in Section III below.

3. LDEQ will for the next 5-3 years update its webpage "Denka: The Path Forward" with a summary of all inspections and enforcement actions taken at the Denka facility including links to relevant documents in EDMS. Summaries will Links to relevant EDMS documents will be posted within 30 days of completion of the inspection or enforcement activity of issuance of any enforcement action.

~~H. Updating LDEQ's Ambient Air Standards (AAS)~~

Commented [OM19]: LDEQ: We added in recognition of information is in EDMS while addressing community concerns about timely information using LDEQ's existing Denka webpage.

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~~LDEQ will develop a process to update LDEQ's current Ambient Air Standards (AAS); to regularly update the AAS; and to add chronic standards beginning with mercury and hydrogen sulfide. When considering data for both acute and chronic standards, LDEQ will use the best available data (e.g., for chronic standards utilize U.S. EPA Reference Concentrations (RfCs) or Inhalation Unit Risks (IURs)). Within 180 days of the effective date of this Agreement, LDEQ will provide EPA confirmation of the adoption of this process.~~

II. ~~Modelling of Emissions in St. James and St. John the Baptist Parishes~~

~~1. Within XX days of the effective date of this Agreement, LDEQ will conduct HEMS modelling of EtO and chloroprene emissions from facilities in St. James and St. John the Baptist Parishes.~~

~~3.1. Within 90 days of completing the HEMS modelling in paragraph II. I. 1. above, LDEQ will provide a risk communication presentation about the results of the HEMS modelling to residents and Parish government agencies including school boards.~~

II. ~~Public Engagement~~

1. LDEQ's practice is to include all meeting records and written communication in the Electronic Data Management System (EDMS) file for the regulated facility. LDEQ will ensure that this includes ~~notes of meetings or other oral communication with permit applicants and~~ written communication and other outside parties regarding permit applications that are releasable under Louisiana ~~Open-Public~~ Records law (e.g., applicant's comments on draft permit monitoring terms and conditions, emissions limitations).

~~2. LDEQ will post relevant Title V permit files on its website at least 45 days before a draft Title V permit is published for comment.~~

~~3.2. LDEQ will provide a link on its Website website Homepage homepage to its spreadsheet of all air permit applications received and pending which includes minor source applications.~~

~~4. Within 180 days, LDEQ will develop and implement a policy to provide public notice and comment for minor source permit applications:~~

~~a) where concerns about environmental justice issues or discriminatory impacts have been raised by the public;~~

~~b) in an identified area of concern (e.g., area where LDEQ has received consistent odor complaints); and~~

Commented [OM20]: LDEQ: EPA's draft provision did not presume any outcome as bullet 2 stated nor does the provision make LDEQ's program subject to EPA oversight through the IRA. The provision says LDEQ will come up with a plan to update now, regularly update, & send us a copy of the plan.

Commented [CB21R20]: LDEQ disagrees that this language would not make the AAS and review thereof subject to EPA review under the IRA.

Commented [A22]: • LDEQ's Air Toxics Program is a state program, adopted and implemented under state authority. It is not a SIP program subject to EPA oversight. LDEQ will not render the program subject to EPA oversight through the IRA.

• LDEQ AAS are adopted by rule in accordance with the Administrative Procedures Act. LDEQ cannot and will not presume the outcome of any rulemaking. ... [1]

Commented [CB23]: EPA's proposed rulemaking included modelling of risk for EtO and chloroprene in the Industrial Corridor.

Commented [A24]: LDEQ will not agree to HEM4 modeling of ethylene oxide and chloroprene emissions ... [2]

Commented [OM25]: LDEQ: Would LDEQ commit to deploy the TLC or MAMLS to monitor EtO and other pollutant emissions levels (e.g., H2S) of concern to res ... [3]

Commented [CB26R25]: See proposed revision above.

Commented [A27]: Propose this entire section be eliminated. Public engagement has been addressed in other sections of the draft IRA.

Commented [CB28]: LDEQ does not make, and is not required to make, a record of all oral communications with permit applicants.

Commented [A29]: It is already LDEQ's practice to include all meeting records and written communication in the EDMS file for the regulated facility.

Commented [OM30R29]: We incorporated LDEQ's statement about what it already does. Complainants raised concerns that not all information regarding meetings & ... [4]

Commented [A31]: This is not a reasonable timeframe. However, a list of all permit applications received by the Department is maintained on LDEQ's website per the ... [5]

Commented [OM32R31]: What is a reasonable timeframe?

Commented [CB33]: LDEQ seeks clarification as to what is requested in this provision. The permit application and associated information typically will be publicly available ... [6]

Commented [A34]: As noted in our response, we already have a spreadsheet on our website of all applications received and pending which includes minor source ... [7]

Commented [OM35R34]: We tried to find the spreadsheet LDEQ refers to in its website & were ... [8]

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e) ~~for the type of facility that communities generally raise concerns about (e.g., chemical plants, refineries, grain terminals).~~

5-3. LDEQ's public notice and comment and public hearing on draft Title V ~~and minor source~~ permits will follow LDEQ's Title V public participation requirements and will meet any applicable procedural requirements under the Public Participation Plan, Language Access Plan, and Disability Access Plan adopted pursuant to Section III below.

Commented [A36]: No, we will not agree to this.

Commented [OM37]: LDEQ: In discussions you stated you have discretion & would consider doing more for permits that don't usually have public notice & comment:

- where concerns about environmental justice issues or discriminatory impacts have been raised by the public;
- in an identified area of concern (e.g., area where LDEQ has received consistent odor complaints);
- for the type of facility that communities generally raise concerns about (e.g., chemical plants, refineries, grain terminals).

Commented [CB38R37]: This language is overly broad and would practically result in public notice and comment of every minor source permit.

Commented [OM39]: Tracks language LDEQ provided above about Denka Title V renewal permit process.

Page 6: [1] Commented [A22]**Author**

- LDEQ's Air Toxics Program is a state program, adopted and implemented under state authority. It is not a SIP program subject to EPA oversight. LDEQ will not render the program subject to EPA oversight through the IRA.
- LDEQ AAS are adopted by rule in accordance with the Administrative Procedures Act. LDEQ cannot and will not presume the outcome of any rulemaking.
- If undertaking any rulemaking to revise or add new AAS, LDEQ would rely on the best available data at the time of the rulemaking.

Page 6: [2] Commented [A24]**Author**

LDEQ will not agree to HEM4 modeling of ethylene oxide and chloroprene emissions.

- EJScreen incorporates the results of AirToxScreen, which in turn utilizes HAPEM, not HEM, to estimate exposure and risk.
- EPA has (presumably) modeled estimated risks for ethylene oxide and chloroprene emitting facilities, including those in St. James and St. John the Baptist, in conducting the residual risk reviews required under the CAA. These rule revisions, with results of the risk estimates, are to be proposed in March 2023.
- EPA IURs for both ethylene oxide and chloroprene are currently subject to court challenge.

Page 6: [3] Commented [OM25]**O'Lone, Mary****4/26/2023 5:25:00 PM**

LDEQ: Would LDEQ commit to deploy the TLC or MAMLs to monitor EtO and other pollutant emissions levels (e.g., H2S) of concern to residents in St. James, St. John the Baptist, and other communities near EtO emitters for meaningful periods of time in the meanwhile?

Page 6: [4] Commented [OM30R29]**O'Lone, Mary****5/8/2023 7:26:00 PM**

We incorporated LDEQ's statement about what it already does. Complainants raised concerns that not all information regarding meetings & oral communications were included in the record. This just spells out that LDEQ already does this.

Page 6: [5] Commented [A31]**Author**

This is not a reasonable timeframe. However, a list of all permit applications received by the Department is maintained on LDEQ's website per the statutory requirement in La. R.S. 30:2022.1, and any interested person may request to receive monthly email notifications from the Department regarding applications received.

Page 6: [6] Commented [CB33]**Courtney Burdette****6/6/2023 3:05:00 PM**

LDEQ seeks clarification as to what is requested in this provision. The permit application and associated information typically will be publicly available in EDMS more than 45 days before commencement of the public comment period.

Page 6: [7] Commented [A34]**Author**

As noted in our response, we already have a spreadsheet on our website of all applications received and pending which includes minor source applications. We don't need to agree to anything further on this.

Page 6: [8] Commented [OM35R34]**O'Lone, Mary****5/8/2023 7:35:00 PM**

We tried to find the spreadsheet LDEQ refers to in its website & were unsuccessful. Proposed provision is a compromise to our provision:

LDEQ will notify the public via LDEQ's website when it receives a minor source permit application for which LDEQ regulations do not require public notice and comment..

Exhibit 84



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

June 16, 2023

Ms. Bliss M. Higgins, Assistant Administrator
Office of Environmental Services
Louisiana Department of Environmental Quality
P.O. Box 4313
Baton Rouge, LA 70821-4313

RE: EPA Objection to Title V Operating Permit Number 3086-V10
Nucor Steel Louisiana LLC; Convent, St. James Parish, Louisiana

Dear Ms. Higgins:

This letter is in response to the Louisiana Department of Environmental Quality (LDEQ) submittal to our office containing the proposed renewal of the title V permit for the Nucor Steel Louisiana, LLC (Nucor) Facility permit referenced above. The United States Environmental Protection Agency has a 45-day review period which began on May 5, 2023, and ends on June 20, 2023. We have reviewed the LDEQ's proposed title V permit action and Statement of Basis. In accordance with 40 CFR § 70.8(c) and 42 U.S.C. § 7661d(b)(1), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (CAA, or the Act) requires EPA to object to the issuance of a proposed title V permit during its 45-day review period if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. The enclosure to this letter provides the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objection.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to address the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the State must respond to our objection within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding objection issues may be resolved prior to the expiration of the 90-day period.

EPA Region 6 has conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a five-kilometer radius of the Nucor Steel Facility. This analysis shows a total population of approximately 1,921 residents within a five-kilometer radius of the facility, of which approximately 1,649 or 86% are people of color, 47% are low income and 23% have less than a high school education. The air toxics cancer risk (lifetime risk per million) is 54, whereas the state risk is on average 40. In addition, the EPA reviewed the EJScreen EJ Indices, which combine certain demographic indicators with 12 environmental indicators. The results show that 6 of the EJ Indices in this five-kilometer radius area exceed the 80th percentile in the State of Louisiana, with 2 of the 12 EJ Indices exceeding the 90th percentile. As you are aware, the Nucor facility is in an area that is heavily populated by industrial facilities that can contribute to health disparities among the residents of the area.

EPA Objections
LDEQ Title V Permit No. 3086-V10

Page 2 of 3

Tools to address Environmental Justice concerns have been and continue to be developed by EPA to assist states and stakeholders in evaluating environmental justice. To fully assess equity considerations for overburdened communities during the permitting process, EPA believes that an EJ analysis should include input received from the community, an evaluation of existing environmental data, use of known demographic information, and other relevant information as much as possible. We encourage LDEQ to screen permitting actions for EJ concerns and to consider potential compliance issues related to civil rights of the communities potentially impacted early in the permitting process by utilizing EJScreen and knowledge of the impacted area. This screening will indicate whether a permitting decision has the potential to contribute to significant public health or environmental impacts, if the community may be particularly vulnerable to impacts from the proposed permit, and whether the community is already disproportionately impacted either by public health or environmental burdens. A sound screening practice will also provide important information as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of income, national origin (including LEP status), or other demographic factors. LDEQ should take into consideration other permitted facilities in the area, including whether these facilities are major or minor sources of pollution and contribute to community risk. An area with an above average number of sources, especially if those sources are large or in close proximity to residents, is a sign of concern.

Finally, EPA notes that civil rights regulations prohibit state, local, or other entities that receive federal financial assistance, either directly or indirectly from EPA (recipients) from taking actions that are intentionally discriminatory as well as practices that have an unjustified discriminatory effect, including on the bases of race, color, or national origin. EJ and civil rights compliance are complementary. Integrating environmental justice in decision making and ensuring compliance with civil rights laws can, together, address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level of communities. EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of our work. The title v process can allow public participation to serve as a motivating factor for applying closer scrutiny to a title v source's compliance with applicable CAA requirements. Communities can use the title v process to help ensure that each title v permit contains all of a source's applicable requirements, and other conditions necessary to assure the source's compliance with those requirements. When LDEQ responds to this EPA objection, please consider utilizing some form of enhanced public outreach to notify the public of the Executive Director's response to comments and opportunity to petition the EPA to object to the proposed permit.

We are committed to working with the LDEQ to ensure that the final title V permit issued to Nucor is consistent with all CAA applicable title V permitting requirements and the EPA approved Louisiana title V operating permitting program. If you have any questions or wish to discuss further, please contact me or your staff can contact either Cynthia Kaleri, Air Permits Section Supervisor at (214) 665-6772, or Brad Toups, Louisiana Permit Coordinator at (214) 665-7258. Thank you for your cooperation.

Sincerely,

DAVID
GARCIA
Digitally signed
by DAVID
GARCIA
Date: 2023.06.16
08:33:20 -05'00'

David F. Garcia, P.E.
Director
Air and Radiation Division

EPA Objections
LDEQ Title V Permit No. 3086-V10

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Enclosure

ENCLOSURE
EPA Objections to LDEQ Title V Permit No. 3086-V10
Nucor Steel Louisiana LLC

1. Objection for Failure to Justify Use of AP-42 Emission Factors to Estimate Emissions

A fundamental requirement of a title V permit is that it include all “testing, monitoring, reporting and record-keeping requirements sufficient to assure compliance with the terms and conditions of the permit,” 40 CFR § 70.6(c)(1). The proposed title V renewal permit does not satisfy this requirement because it relies on EPA’s AP-42, Compliance of Air Pollutant Emissions Factors (AP-42) to estimate and assess the facility’s compliance with emissions limits and does not properly justify why the factors are representative of the facility’s actual emissions.

In response to a commenter’s concern (see two comments nos. 6 & 29) regarding the use of AP-42 emissions factors to estimate emissions for various processes, the Louisiana Department of Environmental Quality (LDEQ) response contained conclusive statements without providing adequate justification. This generalized response fails to provide the “legal and factual basis for use of AP-42 factors” as required by 40 CFR § 70.7(a)(5).

In response to comments on this issue, LDEQ stated:

Notwithstanding the “Introduction to AP-42” or EPA’s Enforcement Alert, EPA has consistently allowed the use of AP-42 factors to estimate potential emissions.

EPA’s “White Paper for Streamlined Development of Part 70 Permit Applications,” dated July 10, 1995, states “the emissions factors contained in EPA’s publication AP-42 and other EPA documents may be used to make any necessary calculation of emissions.”⁷¹ EPA’s draft New Source Review Workshop Manual also indicates that methods of estimating potential to emit may include AP-42 emission factors.⁷²

More recently, EPA has recognized that “the use of emissions factors has expanded beyond developing emissions inventories to other uses (*e.g.*, developing emissions limits for incorporation into New Source Review (NSR) and Title V operating permits, determining applicability to air pollution regulations, determining compliance with emissions standards, conducting air quality impact analyses, developing control strategies, and performing risk analyses (*i.e.*, section 112(f) residual risk requirements)).

Although LDEQ has cited two different EPA publications regarding the use of AP-42 emission factors, the response above does not provide the proper context and intent of the Enforcement Alert (*i.e.*, Publication no. EPA 325-N-20-001 issued in November 2020 after the 1995 White Paper, and with specific intent to restrict the use of AP-42 emission factors when not appropriate). Therefore, EPA offers clarification that LDEQ should consider in setting renewal permit limits, and in responding to commenters.

The Enforcement Alert is self-explanatory in terms of EPA’s position that emission factors (EFs) should only be used as a “last resort” for setting permit limits and the Alert even highlights language directly from the current AP-42 Manual (Ch 1 Introduction) about the values being only an average and of course dependent upon the specific type of process unit operations and control device(s) implemented for that unit – even acknowledging between-source variability within the main categories covered in the

Manual. Some permitting authorities have relied too heavily on EFs as the basis for initial permit limits, and a company may not be required to ground-truth actual emissions via specific engineering assessments, or even provide a manufacturer emissions guarantee for particular process units and controls in use as part of their permit application prior to required performance testing. Ultimately, the permitting authority does have the challenge of using the best data possible to establish permit limits and this really depends on the applicant providing representative emissions estimates based upon the specific configurations of Air Pollution Control Equipment (APCE) for various process units and operating conditions that are site-specific.

As a general example, EPA always prefers performance testing for combustion units and their APCE (including monitoring of process ancillary equipment operations during such tests), prior to setting permit limits or approving alternative monitoring plans – such testing being designed to demonstrate compliance using representative fuel and operating conditions, with the intent and consideration of exhibiting worst case emissions. EPA would point out that some heaters, engines, and even enclosed combustors (e.g., under NSPS Subpart OOOOa) have had rigorous emissions testing by the manufacturer and can provide an “emissions guarantee” that can be used where such testing has met certain established QA/QC criteria. However, we would point out that a vendor’s marketing brochure may overstate emission reductions and is not a replacement for an emissions guarantee by the manufacturer. In fact, some permit applicants may also add excessive “compliance margins” or “safety factors” to emission limit calculations to determine potential to emit (PTE) of individual units. In such cases, the permitting authority needs to be aware that use of such inflated emission estimates is unacceptable for permitting purposes and can easily correct and document the correction in the permit record, prior to permit issuance.

RTC at 29. LDEQ also stated that:

EPA has also recommended the use of AP-42 emission factors when site-specific data is not available.

When direct emission monitoring or site-specific emission factors are not available, then default emission factors may be the only way to estimate emissions. The EPA has developed emission factors for various types of combustion sources, which are compiled in AP-42. . . . The emission factors in AP-42 are the recommended default emission factors, and AP-42 should be consulted to obtain the appropriate emission factors for criteria pollutants such as SO₂, NO_x, PM, and CO

Again, EPA’s AP-42 document describes various approaches to emission estimation and illustrates them in a hierarchical format. AP-42 emission factors may be used to estimate emissions in air permitting and other applications if applicants or permitting agencies demonstrate that data are lacking, and other preferred approaches are not available. EPA advised users to exercise professional judgement to verify that a particular emission factor is sufficiently representative of emissions from the activity or source to which it is to be applied. AP-42 states the following:

Before simply applying AP-42 emission factors to predict emissions from new or proposed sources, or to make other source-specific emission assessments, the user should review the latest literature and technology to be aware of circumstances that might cause such sources to exhibit emission characteristics different from those of other, typical existing sources. Care should be taken to assure that the subject source type and design, controls, and raw material input are those of the source(s) analyzed to produce the emission factor,

While it can be acceptable for a Title V permit to rely on an emission factor for calculating a facility's emissions where continuous emissions monitoring is not required, the permitting authority must provide a reasonable explanation in the permit record for why the selected emission factor is sufficiently reflective of the facility's actual emissions to ensure continuous compliance with the relevant applicable requirement. See, e.g., *In re Piedmont Green Power LLC*, Order on Petition No. IV201502, at 15 (EPA, Dec. 13, 2016) (“Piedmont Green Power Order”); see also *In re Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2005-6, at 32–33 (EPA, Mar. 15, 2005) (“Tesoro Order”). No such explanation appears in the permit record for the Nucor's proposed title V permit.

An applicant should use the most representative emissions data when determining applicability, applying for a permit, or demonstrating compliance with permit limits. There are more accurate alternatives to AP-42 emission factors available. For example, vendor guarantees and stack testing or Continuing Emissions Monitoring System (CEMS) data from similar process at other facilities.

Based on EPA's review of response to comment nos. 29 and 6, LDEQ has not justified its conclusion that AP-42 emission factors are appropriate to estimate emissions from Nucor's various processes, specifically for a renewal permit.

In responding to this objection, LDEQ should amend the permit and permit record as necessary and ensure that the record is complete by documenting a sufficient justification for the emission estimates in the permit record.

2. Objection for Failure to Justify Use of Emission Factors Purported to be “Guarantees” from Vendors to Estimate Emissions

During the public comment period for this proposed permit, one of the commentators in comment no. 30 pointed out that the permit application relies in many instances on emissions factors purported to be “guarantees” from vendors. Specifically, commentator pointed out that no specific documentation is provided supporting these guarantees, and importantly, the permit application and supporting documentations lacks any mention of any limitations that attach to such guaranteed, which are common – such as limiting vendor guarantees to specific process and operating conditions of the emissions units.

In response to a commenter's concern in comment no. 30 regarding the use of vendor guarantees for emissions factors to estimate emissions for various processes, LDEQ's response contained conclusive statements without providing justification. This generalized response fails to provide the “legal and factual basis for use of AP-42 factors as required by 40 CFR 70.7(a)(5).

In response to comments on this issue, LDEQ stated:

LAC 33:III.517.D.9 requires an application for an air permit to contain “calculations on which the information in the application is based, provided in sufficient detail to allow a determination of the appropriateness and accuracy of such calculations.”

There are no federal or state regulations which require every variable or assumption therein to be substantiated by vendor documentation. However, a responsible official must certify (under penalty of law) that the statements and information contained in the application are “true, accurate, and complete,”⁷⁵ and a professional engineer must certify that “the engineering calculations . . . are true

and accurate.” Thus, LDEQ is not persuaded that Nucor is misrepresenting the emission factors provided by equipment vendors or otherwise applying the emission factors to operational scenarios that they were not intended to address.

The permit records EPA reviewed do not contain information supporting the LDEQ’s determination that vendor guarantees accurately determine emissions from Nucor’s many emission units in terms of mass per unit of time and assure ongoing compliance with permitted emission limits. Where a title V permit allows a permit holder to use an emission factor to determine compliance with an applicable limit guaranteed by equipment vendors, the relevant emission factor must be listed in the permit application and permit documents. LDEQ and applicant failed to provide any technical support, design calculations or vendor literature certified by manufacturer of the equipment with test data to support its assumption that the stated emissions limit can be achieved while operating at certain operating conditions. Not only are the control efficiencies unsupported in the permit record, but the permit record does not provide design or operational limits to assure that any of these efficiencies are in fact achieved. For the PTE to be an enforceable limit, such design and operational parameters must be included in the Permit and documented in the permit record.

Based on EPA’s review of response to comment nos. 30, LDEQ has not justified its conclusion that emission factors supplied by vendors under their guarantees are appropriate to estimate emissions and ensure appropriate permit limits have been developed for Nucor’s many processes.

In responding to this objection, LDEQ should amend the permit and permit record as necessary and must ensure that the record is complete by documenting a sufficient justification for the emission estimates in the permit record including vendor suggested design and operation parameters along with any restrictions on physical and climate/weather related conditions.

3. Objection for Failure to Justify Basis for Assumption of Control Efficiency above 99% for the Enclosed Conveying Systems for Material Handling

As indicated in comment nos. 31 and 47, the application relies on engineering judgement, supported by no documentation or analysis for the calculation of fugitive particular matter control efficiency of 99.9% from conveyors. Not only are these control efficiencies unsupported by any evidence, vendor guarantees, or other documentation, but there are also no design or operational limits to assure that any of these efficiencies are in fact achieved. In order for the PTE to be an enforceable limit, such design and operational parameters must be included in the proposed title V permit. EPA does not consider a vendor guarantee alone to be sufficient justification that a control option will work. Generally, decisions about technical feasibility of the specific pollutant control will be based on chemical, and engineering analyses (as discussed above) in conjunction with information about vendor guarantees. Permitting authorities should ensure that the BACT requirements contained in the permits are supported and justified by the information and analysis presented in a thorough and complete permit record. The record should clearly explain the reasons for selection or rejection of possible control and emissions reductions options and include appropriate supporting analysis.¹

¹ In re Knauf Fiber Glass, GmbH, 8 EAD. 121, 131 (EAB 1999) (“The BACT analysis is one of the most critical elements of the PSD permitting process. As such, it should be well documented in the administrative record.”); In

In response to comments on this issue, LDEQ stated:

The control efficiency of 99.9 percent is based on engineering judgment. The conveyor systems at the DRI Facility are enclosed on three sides, and all material drop, and transfer points are located within enclosed buildings. In addition, the iron ore transported along the receiving conveyors is wetted or treated with chemical dust suppressants to minimize fugitive emissions.

Based on EPA's review of response to comment nos. 31 and 47 and review of permit application (EDMS Document 1280367), LDEQ has not justified its conclusion that the 99.9% control efficiency relied on engineering judgement is based on any historical data collections, observations, or calculations. If these engineering judgements are being used to demonstrate compliance with short term and long-term PM limits, then this calculation methodology should be specified in the permit and supporting documents including any assumptions used. As with the BACT analysis, the entire process, including sources for data, assumptions and calculations made, and results must be summarized in a Technical Support Document (TSD), which is provided as part of a major PSD Permit Application.

In responding to this objection, LDEQ should amend the permit and permit record as necessary and must ensure that the record is complete by documenting a sufficient justification with engineering analysis and calculations for the proposed control efficiency in the permit record.

4. Failure to Adequately Address EPA's Comments Provided to LDEQ about Authorizing Uncontrolled Emissions During Upsets Associated with Bypassing the SulfurOx Unit.

As indicated in comment no. 49, EPA raised some concerns about emissions from Process Heater/Acid Gas absorption vent common stack (PH-1/AV-1). Specifically, in our comment EPA stated that "It would appear that in an endeavor to reduce upsets in the process, such as those associated with bypassing the SulfurOx Unit, the LDEQ is authorizing uncontrolled emissions, upsets if you will, of an indeterminant frequency. Such emissions include 226.9 lb/hr of H₂S." EPA recommended that LDEQ consider mandating further engineering studies followed by permit modifications to eliminate these emissions events.

Authorizing uncontrolled emissions during upsets associated with bypassing the SulfurOx Unit and exemptions to comply with the BACT limit in the proposed title V permit violates the CAA requirement for emissions standards and limitations to apply continuously, including during startup, shutdown, and maintenance (SSM) events. A mere "general duty" to minimize emissions during SSM events violates the Act. See *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008) ("Because the general duty is the only standard that applies during SSM events—and accordingly no section 112 standard governs these events—the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously."); see also EPA, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 Fed. Reg. 33840, 33976 ("In order to be permissible in a SIP, an

re *Steel Dynamics, Inc.*, 9 EAD. 165, 224-25 (EAB 2000) (remanding BACT limitation where permit issuer failed to provide adequate explanation for why limits deviated from those of other facilities).

emission limitation must be applicable to the source continuously, i.e., cannot include periods during which emissions from the source are legally or functionally exempt from regulation.”).

Based on EPA’s review of response to comment no. 49 and permit records, LDEQ has not addressed the content of the comment and recommendation submitted by EPA. Instead, the LDEQ concludes that the Nucor has undertaken all reasonable efforts to further reduce emissions from this source (PH-1/AV-1). Facilities cannot avoid continuous compliance with an emission limit in the permit by complying with other work-practice standards if those standards do not assure compliance with the applicable permit limit. LDEQ did not provide a direct response to EPA’s comment and recommendations, instead only a reference back to the Consolidated Compliance Order & Notice of Potential Penalty AE-CN-19-01088. However, such reference does not address EPA’s comments and recommendations on this topic.

In responding to this objection, LDEQ should amend the permit and permit record as necessary and must ensure that the record is complete by documenting a sufficient justification with engineering analysis in the permit record to address EPA’s concerns about upsets emissions.

5. Failure to Limit Sulfur Content in the Natural Gas Fuel and Iron Ore, and Lack of Monitoring and Recordkeeping Requirements to Demonstrate Compliance with Permit Limits

All sources subject to title V must have a permit to operate that “assures compliance by the source with all applicable requirements.” See 40 CFR § 70.1(b); CAA section 504(a). Applicable requirements are defined in section 70.2 to include: “(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act. . . .” Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction review requirements under the Act, EPA regulations, and SIP’s. See generally CAA sections 110(a)(2)(C), 160-69, & 173; 40 CFR §§ 51.160-66 & 52.21.

Pursuant to EPA policy, the Agency generally will not object to the issuance of a title V permit due to concerns over BACT, LAER, or related determinations made long ago during a prior preconstruction permitting process. However, regarding recently issued NSR/PSD permits, note that EPA policy is to provide adverse comments concerning the substantive or procedural deficiencies of a preconstruction permit during the NSR/PSD permitting process.

During EPA’s review of Nucor’s proposed title V permit, we noticed that the PSD permit no. PSD-LA-751(M5) does not contain sulfur content limits for natural gas fuel or iron ore which is primary raw material for DRI production. Specifically, the Basis for Decision document for Nucor’s PSD and proposed title V permits mentioned use of pipeline quality natural gas but there are no specific conditions to restrict usage of only pipeline quality natural gas in the specific requirements documents. Conditions within the Specific Requirements document only use the term natural gas as fuel and not pipeline quality natural gas, which has low sulfur content. Pipeline Quality Natural Gas means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

Similarly, the Basis for Decision document page 5, under As-Built Reconciliations section, Nucor has admitted that it has discovered that the sulfur content in the iron ore varies more than previously anticipated, thereby resulting in variability in emissions rates. This changes in the sulfur content in iron ore and natural gas fuel can spike emissions of sulfur dioxides (SO₂ and SO₃), sulfuric acid mist (H₂SO₄) and hydrogen sulfides (H₂S) and may violate allowable short term and long-term emissions limits. Additionally, the specific conditions do not require a maximum raw material usage limit in terms of

Enclosure – EPA Objections
LDEQ Title V Permit No. 3086-V10

Page 7 of 7

metric tons per hour or metric tons per year and do not have corresponding recordkeeping requirements, nor does the permit record explain why it is not necessary to establish such limits. In addition, we also note for LDEQ that sulfuric acid mist emissions specifically from this facility has been a long-standing complaint from the local community with regard to impacts on nearby residents and their physical property.

In responding to this objection, LDEQ should amend the permits and permit records as necessary and must ensure that the permit records are complete by documenting a sufficient justification with engineering analysis and calculations to address EPA's concerns about missing monitoring and recordkeeping requirements for fuel and raw material usage for various process equipment that ensure compliance with emissions limits. These monitoring and recordkeeping requirements may include analyzing a sample of fuel and raw material iron ore to show that it meets the specifications or obtaining a sulfur analysis certificate from the vendor for each batch to meet testing requirements; the permittee must establish and maintain records of the sulfur content of the fuel used at the facility. The permit and supporting documents also need to specify the frequency of these monitoring and recordkeeping requirements. LDEQ must revise the Permit and/or permit record to ensure that the Permit contains sufficient and practically enforceable monitoring and recordkeeping requirements to assure compliance with all applicable federal requirements, including the specific emission limits.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, Jeff Landry,

PLAINTIFF,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; et al.,

DEFENDANTS.

CIVIL ACTION NO. 2:23-cv-00692

SUPPLEMENTAL DECLARATION OF RYAN SEIDEMANN

1. My name is Ryan M. Seidemann. I am an Assistant Attorney General employed by the Louisiana Department of Justice. Except where otherwise indicated, I make this declaration based on my personal knowledge. I could competently testify as to its contents if called to do so.

2. Attached as Exhibit 52 is a true and accurate copy of USEPA's FY 2023 Justification of Appropriation Estimates, as obtained from www.epa.gov.¹

3. Attached as Exhibit 53 is a true and accurate copy of USEPA's FY 2024 EPA Budget in Brief, as obtained from www.epa.gov.²

4. Attached as Exhibit 54 is a true and accurate copy of correspondence and a Voluntary Compliance Agreement (Missouri), as obtained from www.epa.gov.³

5. Attached as Exhibit 55 is a true and accurate copy of correspondence and an Informal Resolution Agreement (Michigan), as obtained from www.epa.gov.⁴

¹ <https://www.epa.gov/system/files/documents/2022-04/fy-2023-congressional-justification-all-tabs.pdf>

² <https://www.epa.gov/system/files/documents/2023-03/fy-2024-epa-bib.pdf>

³ <https://www.epa.gov/system/files/documents/2023-05/2022.06.22%2001RNO-20-R7%20FINAL%20Recipient%20Correspondence%20and%20VCA.pdf>

⁴ <https://www.epa.gov/system/files/documents/2023-08/Resolution%20Letter%20and%20Informal%20Resolution%20Agreement%20C%20EPA%20Complaint%20No.%2001RNO-22-R5%20%28MI%20EGLE%20Ajax%29.pdf>

6. Attached as Exhibit 56 is a true and accurate copy of a Michigan Department of EGLE statement on resolution, as obtained from www.michigan.gov.⁵

7. Attached as Exhibit 57 is a true and accurate copy of an Interim Resolution Agreement (Alabama), as obtained from www.justice.gov.⁶

8. Attached as Exhibit 58 is a true and accurate copy of a press release, as obtained from www.epa.gov.⁷

9. Attached as Exhibit 59 is a true and accurate copy of a letter dated July 28, 2023, as obtained from www.epa.gov.⁸

10. Attached as Exhibit 60 is a true and accurate copy of a complaint by Sierra Club dated August 25, 2023, as obtained from www.epa.gov.⁹

11. Attached as Exhibit 61 is a true and accurate copy of a Title VI Legal Manual, as obtained from www.justice.gov.¹⁰

12. Attached as Exhibit 62 is a true and accurate copy of a news article, as obtained from apnews.com.

13. Attached as Exhibit 63 is a true and accurate copy of a news article, as obtained from i.com.

14. Attached as Exhibit 64 is a true and accurate copy of a news article dated April 27, 2023, as obtained from insideepa.com.

15. Attached as Exhibit 65 is a true and accurate copy of a news article dated July 13, 2023, as obtained from insideepa.com.

⁵ <https://www.michigan.gov/egle/newsroom/press-releases/2023/08/10/egle-statement>.

⁶ <https://www.justice.gov/opa/press-release/file/1582566/download>.

⁷ <https://www.epa.gov/newsreleases/icymi-his-journey-justice-epa-administrator-michael-s-regan-toured-historically>.

⁸ <https://www.epa.gov/system/files/documents/2023-07/07RNO-23-R6%20REC%20Rejection-07-28-23.pdf>.

⁹ https://www.epa.gov/system/files/documents/2023-09/11r-23-r4-complaint_redacted.pdf.

¹⁰ <https://www.justice.gov/crt/book/file/1364106/download#:~:text=Specifically%2C%20Title%20VI%20provides%20as,%C2%A7%202000d>.

16. Attached as Exhibit 66 is a true and accurate copy of a news article dated August 24, 2023, as obtained from insideepa.com.

17. Attached as Exhibit 67 is a true and accurate copy of a news article dated September 26, 2023, as obtained from insideepa.com.

18. Attached as Exhibit 68 is a true and accurate copy of a news article dated August 29, 2023, as obtained from wwno.org.

19. Attached as Exhibit 69 is a true and accurate copy of a news article dated September 4, 2023, as obtained from www.npr.org.

20. Attached as Exhibit 70 is a true and accurate copy of a news article dated June 28, 2023, as obtained from www.pbs.org.

21. Attached hereto as Exhibit 71 is an NPR story dated September 20, 2023, which is available at <https://www.wwno.org/podcast/sea-change/2023-09-20/abandoned-in-plantation-country>. Also at that link is a recording of an NPR segment. In that recording, an NPR reporter speaks with a woman identified as Sharon Lavigne of RISE St. James, who was one of the Title VI complainants. At around 16:30-55 of the recording, Ms. Lavigne recounts a conversation she had with an EPA official, wherein the official admits EPA's motivation for dismissing the pending Title VI Complaints against LDEQ and LDH. Specifically, Ms. Lavigne recounts that EPA official told her "not to give up hope on them, [t]hey can't explain everything of why they dropped the investigation, and they said that they did it to protect the program."

22. Attached hereto as Exhibit 72 is a Bloomberg BNA article dated February 24, 2017, as obtained from <https://web.archive.org/web/20170312100855/https://www.bna.com/permits-flint-burnt-n57982084397/>

23. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. § 1746.

Sworn and subscribed this 29th day of September, 2023, in Baton Rouge, Louisiana



RYAN M. SEIDEMANN, Ph.D.

Exhibit 52



**United States
Environmental Protection Agency**

FISCAL YEAR 2023

**Justification of Appropriation
Estimates for the Committee
on Appropriations**

Tab 05: Environmental Programs and Management

EPA-190-R-22-001

**April 2022
www.epa.gov/cj**

**Environmental Protection Agency
FY 2023 Annual Performance Plan and Congressional Justification**

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Environmental Protection Agency
FY 2023 Annual Performance Plan and Congressional Justification

APPROPRIATION: Environmental Programs & Management
Resource Summary Table
(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
Environmental Programs & Management				
Budget Authority	\$2,572,857	\$2,761,550	\$3,796,280	\$1,034,730
Total Workyears	8,677.8	8,883.4	10,332.1	1,448.7

Bill Language: Environmental Programs and Management

For environmental programs and management, including necessary expenses not otherwise provided for, for personnel and related costs and travel expenses; hire and purchase of passenger motor vehicles, including zero emission passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002; implementation of a coal combustion residual permit program under section 2301 of the Water and Waste Act of 2016; and not to exceed \$9,000 for official reception and representation expenses, 3,796,280,000, to remain available until September 30, 2024: Provided, That of the funds included under this heading, \$578,336,000 shall be for Geographic Programs specified in the explanatory statement: Provided further, That of the funds included under this heading, the Chemical Risk Review and Reduction program project shall be allocated for this fiscal year, excluding the amount of any fees appropriated, not less than the amount of appropriations for that program project for fiscal year 2014: Provided further, That of the funds included under this heading, \$140,000,000, to remain available until expended, shall be for environmental justice implementation grants, of which \$50,000,000 shall be for competitive grants to reduce the disproportionate health impacts of environmental pollution in the environmental justice community; \$25,000,000 shall be for an Environmental Justice Community Grant Program for grants to nonprofits to reduce the disproportionate health impacts of environmental pollution in the environmental justice community; \$25,000,000 shall be for an Environmental Justice State Grant Program for grants to states to create or support state environmental justice programs; \$25,000,000 shall be for a Tribal Environmental Justice Grant Program for grants to tribes or intertribal consortia to support tribal work to eliminate disproportionately adverse human health or environmental effects on environmental justice communities in Tribal and indigenous communities; and \$15,000,000 shall be for a competitive Community-based Participatory Research Grant Program for grants to institutions of higher education to develop partnerships with community-based organizations to improve the health outcomes of residents and workers in environmental justice communities: Provided further, That up to 5% of the funds provided by the previous proviso may be reserved for salaries, expenses, and administration: Provided further, That of the funds included under this heading, \$10,000,000,

to remain available until expended, shall be for an Environmental Justice Training Program for grants to nonprofits for multi-media or single media activities to increase the capacity of residents of underserved communities to identify and address disproportionately adverse human health or environmental effects of pollution: Provided further, That up to 5% of the funds provided by the previous proviso may be reserved for salaries, expenses, and administration.

Note.—A full-year 2022 appropriation for this account was not enacted at the time the Budget was prepared; therefore, the Budget assumes this account is operating under the Continuing Appropriations Act, 2022 (Division A of Public Law 117-43, as amended). The amounts included for 2022 reflect the annualized level provided by the continuing resolution.

Program Projects in EPM
(Dollars in Thousands)

Program Project	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
Clean Air and Climate				
Clean Air Allowance Trading Programs	\$12,920	\$13,153	\$23,523	\$10,370
Climate Protection	\$91,632	\$97,000	\$125,216	\$28,216
Federal Stationary Source Regulations	\$19,317	\$20,733	\$41,617	\$20,884
Federal Support for Air Quality Management	\$131,015	\$138,020	\$289,010	\$150,990
Stratospheric Ozone: Domestic Programs	\$4,805	\$4,633	\$26,607	\$21,974
Stratospheric Ozone: Multilateral Fund	\$8,326	\$8,711	\$18,000	\$9,289
Subtotal, Clean Air and Climate	\$268,013	\$282,250	\$523,973	\$241,723
Indoor Air and Radiation				
Indoor Air: Radon Program	\$2,224	\$3,136	\$5,004	\$1,868
Radiation: Protection	\$8,283	\$7,661	\$10,588	\$2,927
Radiation: Response Preparedness	\$2,703	\$2,404	\$3,004	\$600
Reduce Risks from Indoor Air	\$10,968	\$11,750	\$23,542	\$11,792
Subtotal, Indoor Air and Radiation	\$24,178	\$24,951	\$42,138	\$17,187
Brownfields				
Brownfields	\$22,136	\$24,000	\$36,842	\$12,842
Compliance				
Compliance Monitoring	\$97,583	\$102,500	\$144,770	\$42,270
Enforcement				

Program Project	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
Civil Enforcement	\$164,888	\$168,341	\$210,011	\$41,670
Criminal Enforcement	\$49,588	\$51,275	\$61,411	\$10,136
NEPA Implementation	\$15,809	\$16,943	\$19,883	\$2,940
Subtotal, Enforcement	\$230,285	\$236,559	\$291,305	\$54,746
Environmental Justice				
Environmental Justice	\$10,343	\$11,838	\$294,938	\$283,100
Geographic Programs				
Geographic Program: Chesapeake Bay	\$77,876	\$87,500	\$90,568	\$3,068
Geographic Program: Gulf of Mexico	\$5,335	\$20,000	\$22,524	\$2,524
Geographic Program: Lake Champlain	\$14,996	\$15,000	\$20,000	\$5,000
Geographic Program: Long Island Sound	\$30,361	\$30,400	\$40,002	\$9,602
Geographic Program: Other				
<i>Lake Pontchartrain</i>	\$0	\$1,900	\$1,932	\$32
<i>S.New England Estuary (SNEE)</i>	\$5,152	\$5,500	\$6,252	\$752
<i>Geographic Program: Other (other activities)</i>	\$1,579	\$3,000	\$3,024	\$24
Subtotal, Geographic Program: Other	\$6,731	\$10,400	\$11,208	\$808
Great Lakes Restoration	\$306,380	\$330,000	\$340,111	\$10,111
Geographic Program: South Florida	\$1,369	\$6,000	\$7,202	\$1,202
Geographic Program: San Francisco Bay	\$6,718	\$8,922	\$12,004	\$3,082
Geographic Program: Puget Sound	\$32,946	\$33,750	\$35,016	\$1,266
Subtotal, Geographic Programs	\$482,712	\$541,972	\$578,635	\$36,663
Homeland Security				
Homeland Security: Communication and Information	\$3,893	\$4,145	\$4,650	\$505
Homeland Security: Critical Infrastructure Protection	\$733	\$909	\$1,014	\$105
Homeland Security: Protection of EPA Personnel and Infrastructure	\$4,915	\$4,959	\$5,139	\$180
Subtotal, Homeland Security	\$9,540	\$10,013	\$10,803	\$790
Information Exchange / Outreach				

Program Project	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
State and Local Prevention and Preparedness	\$13,402	\$13,736	\$22,908	\$9,172
TRI / Right to Know	\$12,689	\$13,206	\$13,675	\$469
Tribal - Capacity Building	\$12,945	\$12,902	\$16,386	\$3,484
Executive Management and Operations	\$48,837	\$46,836	\$63,256	\$16,420
Environmental Education	\$3,311	\$8,580	\$8,668	\$88
Exchange Network	\$13,713	\$14,084	\$14,413	\$329
Small Minority Business Assistance	\$1,756	\$1,680	\$1,935	\$255
Small Business Ombudsman	\$1,250	\$1,778	\$2,183	\$405
Children and Other Sensitive Populations: Agency Coordination	\$8,277	\$6,173	\$6,362	\$189
Subtotal, Information Exchange / Outreach	\$116,181	\$118,975	\$149,786	\$30,811
International Programs				
US Mexico Border	\$2,818	\$2,837	\$3,275	\$438
International Sources of Pollution	\$6,409	\$6,746	\$11,758	\$5,012
Trade and Governance	\$5,894	\$5,292	\$6,187	\$895
Subtotal, International Programs	\$15,121	\$14,875	\$21,220	\$6,345
IT / Data Management / Security				
Information Security	\$6,765	\$8,285	\$23,739	\$15,454
IT / Data Management	\$74,013	\$82,715	\$98,452	\$15,737
Subtotal, IT / Data Management / Security	\$80,777	\$91,000	\$122,191	\$31,191
Legal / Science / Regulatory / Economic Review				
Integrated Environmental Strategies	\$9,614	\$9,475	\$40,912	\$31,437
Administrative Law	\$3,768	\$4,975	\$5,882	\$907
Alternative Dispute Resolution	\$533	\$864	\$1,175	\$311
Civil Rights Program	\$8,968	\$9,205	\$25,869	\$16,664
Legal Advice: Environmental Program	\$55,700	\$49,595	\$76,855	\$27,260
Legal Advice: Support Program	\$16,645	\$15,865	\$18,892	\$3,027
Regional Science and Technology	\$466	\$638	\$4,923	\$4,285
Science Advisory Board	\$3,422	\$3,205	\$3,981	\$776
Regulatory/Economic-Management and Analysis	\$13,850	\$12,421	\$16,247	\$3,826

Program Project	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
Subtotal, Legal / Science / Regulatory / Economic Review	\$112,967	\$106,243	\$194,736	\$88,493
Operations and Administration				
Central Planning, Budgeting, and Finance	\$71,528	\$76,718	\$89,154	\$12,436
Facilities Infrastructure and Operations	\$257,524	\$285,441	\$288,293	\$2,852
Acquisition Management	\$30,623	\$32,247	\$40,017	\$7,770
Human Resources Management	\$48,256	\$46,229	\$66,087	\$19,858
Financial Assistance Grants / IAG Management	\$27,294	\$25,430	\$33,040	\$7,610
Subtotal, Operations and Administration	\$435,225	\$466,065	\$516,591	\$50,526
Pesticides Licensing				
Science Policy and Biotechnology	\$1,287	\$1,546	\$1,580	\$34
Pesticides: Protect Human Health from Pesticide Risk	\$58,124	\$60,181	\$62,726	\$2,545
Pesticides: Protect the Environment from Pesticide Risk	\$36,714	\$39,543	\$45,876	\$6,333
Pesticides: Realize the Value of Pesticide Availability	\$6,034	\$7,730	\$7,979	\$249
Subtotal, Pesticides Licensing	\$102,159	\$109,000	\$118,161	\$9,161
Research: Chemical Safety for Sustainability				
Research: Chemical Safety for Sustainability	\$115	\$0	\$0	\$0
Resource Conservation and Recovery Act (RCRA)				
RCRA: Corrective Action	\$33,921	\$38,453	\$39,820	\$1,367
RCRA: Waste Management	\$59,769	\$70,465	\$79,743	\$9,278
RCRA: Waste Minimization & Recycling	\$8,404	\$9,982	\$10,444	\$462
Subtotal, Resource Conservation and Recovery Act (RCRA)	\$102,095	\$118,900	\$130,007	\$11,107
Toxics Risk Review and Prevention				
Endocrine Disruptors	\$5,209	\$7,533	\$7,614	\$81

Program Project	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
Pollution Prevention Program	\$11,476	\$12,558	\$17,121	\$4,563
Toxic Substances: Chemical Risk Review and Reduction	\$72,643	\$60,280	\$124,243	\$63,963
Toxic Substances: Lead Risk Reduction Program	\$11,991	\$13,129	\$13,749	\$620
Subtotal, Toxics Risk Review and Prevention	\$101,318	\$93,500	\$162,727	\$69,227
Underground Storage Tanks (LUST / UST)				
LUST / UST	\$10,373	\$11,250	\$12,564	\$1,314
Protecting Estuaries and Wetlands				
National Estuary Program / Coastal Waterways	\$29,496	\$31,822	\$32,184	\$362
Wetlands	\$18,562	\$19,300	\$25,637	\$6,337
Subtotal, Protecting Estuaries and Wetlands	\$48,058	\$51,122	\$57,821	\$6,699
Ensure Safe Water				
Beach / Fish Programs	\$1,146	\$1,584	\$1,827	\$243
Drinking Water Programs	\$97,190	\$106,903	\$133,258	\$26,355
Subtotal, Ensure Safe Water	\$98,335	\$108,487	\$135,085	\$26,598
Ensure Clean Water				
Marine Pollution	\$8,206	\$9,468	\$12,299	\$2,831
Surface Water Protection	\$197,137	\$206,882	\$239,688	\$32,806
Subtotal, Ensure Clean Water	\$205,343	\$216,350	\$251,987	\$35,637
Clean and Safe Water Technical Assistance Grants				
Water Quality Research and Support Grants	\$0	\$21,700	\$0	-\$21,700
TOTAL EPM	\$2,572,857	\$2,761,550	\$3,796,280	\$1,034,730

Brownfields

Brownfields

Program Area: Brownfields

Goal: Safeguard and Revitalize Communities

Objective(s): Clean Up and Restore Land for Productive Uses and Healthy Communities

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$22,136</i>	<i>\$24,000</i>	<i>\$36,842</i>	<i>\$12,842</i>
Total Budget Authority	\$22,136	\$24,000	\$36,842	\$12,842
Total Workyears	122.6	127.5	187.5	60.0

Program Project Description:

Brownfields sites are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfields can be found in the heart of America's main streets and former economic centers. The Brownfields Program supports efforts to revitalize these sites by awarding grants and providing technical assistance to states, tribes, local communities, and other stakeholders to work together to plan, inventory, assess, safely cleanup, and reuse brownfields. Approximately 143 million people (roughly 44 percent of the U.S. population) live within three miles of a brownfields site that receives EPA funding.¹ Similarly, within a half mile of a brownfields site receiving EPA funding, 21 percent of people live below the national poverty level, 17 percent have less than a high school education, 56 percent are people of color, and seven percent are linguistically isolated. As of March 2022, grants awarded by the Program have led to over 146,000 acres of idle land made ready for productive use and over 183,000 jobs and over \$35.0 billion leveraged.²

The Brownfields Program directly supports the goals of the Administration's Justice40 initiative. Operating activities include: 1) conducting the annual, high volume cooperative agreement competitions; 2) awarding new cooperative agreements; 3) managing the ongoing cooperative agreement workload; 4) providing technical assistance and ongoing support to grantees; 5) providing contractor supported technical assistance to non-grantee communities with brownfields; 6) collaborating with other agency programs; 7) operating the Assessment Cleanup and Redevelopment Exchange System (ACRES) online grantee reporting tool; 8) assisting communities to explore land reuse opportunities under the Land Revitalization Program; and 9) developing guidance and tools that clarify potential environmental cleanup liabilities.

¹ U.S. EPA, Office of Land and Emergency Management 2020. Data collected includes: (1) Superfund, Brownfield, and RCRA Corrective Action site information as of the end of FY 2019; (2) UST/LUST information as of late-2018 to mid-2019 depending on the state; and (3) 2015-2018 American Community Survey (ACS) Census data.

² From EPA website: <https://www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits#:~:text=Enrolled%20over%2034%2C191%20properties%20annually,3%2C478%2C000%20acres%20ready%20for%20reuse.>

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.1, Clean Up and Restore Land for Productive Uses and Healthy Communities in the *FY 2022 - 2026 EPA Strategic Plan*.

Today, there are more than 1,000 active Brownfields cooperative agreements (CAs) and hundreds of land revitalization projects, targeted assessments, financial planning, and visioning sessions taking place. All are supported and invigorated by the Brownfields Program's best tool – community development specialists. Specialists are the backbone of the success of the Agency broadly and they bring unique technical and program management experience, as well as public and environmental health expertise, to individual brownfield communities. The communities the program works with have achieved incredible things, but without the skilled guidance of EPA community development specialists, the Program would not have had the success that characterizes its history at the nexus between environmental revitalization and community development.

To continue to build on these successes, along with the historic investment from the Infrastructure Investment and Jobs Act, the Agency is investing \$11.9 million and an additional 60 FTE in FY 2023. In FY 2021, a detailed Workload Model Analysis identified a significant barrier to engaging with communities related to the availability of on-the-ground resources to conduct outreach and communication. This investment of 60 regional FTE will provide expanded technical assistance and build capacity in small, rural, Environmental Justice (EJ), and other historically disadvantaged communities and support the Program as it implements a responsive, expansive, and innovative environmental and economic community redevelopment program.

In FY 2023, the Brownfields Program will continue to manage approximately 1,000 assessment, cleanup, Revolving Loan Fund (RLF), multi-purpose, and Environmental Workforce Development and Job Training (EWDJT) cooperative agreements, as well as state and tribal assistance agreements; training, research, and technical assistance agreements; Targeted Brownfields Assessments; and land revitalization projects. The Brownfields Program also will continue to foster federal, state, tribal, and public-private partnerships to return properties to productive economic use, including in historically disadvantaged and EJ communities.

In FY 2023, the Brownfields Program will support the following activities:

- **Compete and Award New Cooperative Agreements:** Review, select, and award an estimated 355 new cooperative agreements, which will lead to approximately \$2.6 billion and 13,480 jobs leveraged in future years.
- **Oversight and Management of Existing Cooperative Agreements:** Continue federal fiduciary responsibility to manage approximately 1,000 existing brownfields cooperative agreements in a reduced capacity, while ensuring the terms and conditions of the agreements are met and provide limited technical assistance. The Program also will provide targeted environmental oversight support to grantees (*e.g.*, site eligibility determinations, review of environmental site assessment and cleanup reports).

- **Technical Assistance:** Provide technical assistance to states, tribes, and local communities in the form of research, training, analysis, and support for community led planning workshops. This can lead to cost effective implementation of brownfields redevelopment projects by providing communities with the knowledge necessary to understand market conditions, economic development and other community revitalization strategies, and how cleanup and reuse can be catalyzed by small businesses.
- **Collaboration:** The Program will work collaboratively with our partners at the state, tribal, and local level on innovative approaches to help achieve land reuse. It also will continue to develop guidance and tools that clarify potential environmental cleanup liabilities, thereby providing greater certainty for parties seeking to reuse these properties. The Program also can provide direct support to facilitate transactions for parties seeking to reuse contaminated properties.
- **Accomplishment Tracking:** Support the maintenance of the ACRES online grantee reporting tool. This enables grantees to track accomplishments and report on the number of sites assessed and cleaned up, and the amount of dollars and jobs leveraged with brownfields grants.
- **Land Revitalization Program Support:** Provide support for approximately two communities as part of EPA's Land Revitalization Program. The Land Revitalization Program supports communities in their efforts to restore contaminated lands into sustainable community assets.

Performance Measure Targets:

Work under this program supports performance results in the Brownfields Projects Program under the STAG appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$953.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$11,889.0 / +60.0 FTE) This program change is an increase for community development specialists to manage land revitalization projects, provide one-on-one financial planning support, and educate tribal, rural, and EJ communities on how to address brownfields. This investment includes \$10.261 million in payroll.

Statutory Authority:

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), §§ 101(39), 104(k), 128(a); Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, § 8001.

Clean Air

Clean Air Allowance Trading Programs

Program Area: Clean Air and Climate

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Improve Air Quality and Reduce Localized Pollution and Health Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$12,920</i>	<i>\$13,153</i>	<i>\$23,523</i>	<i>\$10,370</i>
Science & Technology	\$4,809	\$6,793	\$8,800	\$2,007
Total Budget Authority	\$17,729	\$19,946	\$32,323	\$12,377
Total Workyears	66.2	63.7	82.0	18.3

Program Project Description:

The Clean Air Allowance Trading Programs are nationwide and multi-state programs that address air pollutants that are transported across state, regional, and international boundaries. The programs are designed to control sulfur dioxide (SO₂) and nitrogen oxides (NO_x), key precursors of both fine particulate matter (PM_{2.5}) and ozone (O₃), include Title IV (the Acid Rain Program) of the Clean Air Act, the Cross-State Air Pollution Rule (CSAPR), the CSAPR Update, and the revised CSAPR Update. The infrastructure for the Clean Air Allowance Trading Programs also supports implementation of other state and federal programs to control SO₂, hazardous air pollutants, and greenhouse gases.

The Clean Air Allowance Trading Programs establish a total emission limit across affected emission sources, which must hold allowances as authorizations to emit one ton of the regulated pollutant(s) in a specific emission control period. The owners and operators of affected emission sources may select among different methods of compliance—installing pollution control equipment, switching fuel types, shifting generation to lower-emitting units, purchasing allowances, or other strategies. By offering the flexibility to determine how the sources comply, the programs lower the overall cost, making it feasible to pursue greater emission reductions. These programs are managed through a centralized database system operated by EPA.³ Data collected under these programs are made available to the public through EPA's Clean Air Markets Data Resources website,⁴ which provides access to both current and historical data collected as part of the Clean Air Allowance Trading Programs through charts, reports, and downloadable datasets. To implement the Clean Air Allowance Trading Programs, EPA operates an emission measurement and reporting program, market operations program, environmental monitoring programs, and a communication and stakeholder engagement program.

For emissions measurement and reporting, Part 75 requires almost 4,300 affected units to monitor and report emission and operation data.⁵ The Part 75 program requires high degrees of accuracy

³ Clean Air Act § 403(d).

⁴ For additional information, please refer to <https://www.epa.gov/airmarkets/data-resources>.

⁵ Clean Air Act § 412; Clean Air Act Amendments of 1990. P.L. 101-549 § 821.

and reliability from continuous emission monitoring systems or approved alternative methods at the affected sources. EPA provides the affected emission sources with technical assistance to facilitate compliance with the monitoring requirements, and software, the Emissions Collection and Monitoring Plan System (ECMPS), to process, quality assure, and report data to EPA. To assess the quality of the data, the Agency conducts electronic audits, desk reviews, and field audits of the emission data and monitoring systems. In addition to the Clean Air Allowance Trading Programs, the emission measurement program and ECMPS software support several state and federal emission control and reporting programs, including the Texas SO₂ Trading Program, Regional Greenhouse Gas Initiative (RGGI), and Mercury and Air Toxics Standards (MATS). It also interfaces with the Greenhouse Gas Reporting Program (GHGRP), ensuring the Part 75 data is seamlessly transferred to that program's infrastructure (Electronic Greenhouse Gas Reporting Tool (eGGRT)).

EPA's centralized market operation system (the allowance tracking system) manages accounts and records allowance allocations and transfers.⁶ At the end of each compliance period, allowances are reconciled against reported emissions to determine compliance for every facility with affected emission sources. For over 20 years, the affected facilities have maintained near-perfect compliance under the trading programs.⁷ In 2020, total annual SO₂ emissions from Acid Rain Program-affected emission sources were 788,000 tons, or over 90 percent below the statutory nationwide emissions cap, a level not seen since early in the 20th Century. Total annual 2020 NO_x emissions were 759,000 tons, an almost nine million ton reduction from projected levels, exceeding the Program's goal of a two million ton reduction from projected levels.⁸ The allowance tracking system also supports several state and federal emission control and reporting programs, including the Texas SO₂ Trading Program, RGGI, and MATS.

The Clean Air Act's Good Neighbor provision⁹ requires states or, in some circumstances the Agency, to reduce interstate pollution that significantly contributes to nonattainment or interferes with maintenance of the National Ambient Air Quality Standards (NAAQS). Under this authority, EPA issued CSAPR, which requires 27 states in the eastern U.S. to limit their state-wide emissions of SO₂ and/or NO_x to reduce or eliminate the states' contributions to PM_{2.5} and/or ground-level ozone non-attainment of the NAAQS in downwind states. The emission limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x emissions from certain large stationary sources in each state. In 2016, EPA issued the CSAPR Update to address interstate transport of ozone for the 2008 ozone NAAQS in the eastern United States. EPA revised the CSAPR Update on March 15, 2021, to address a ruling of the U.S. Court of Appeals for the D.C. Circuit. In addition, EPA is supporting state efforts to address regional haze including best available retrofit technology and reasonable progress, as well as interstate air pollution transport contributing to downwind nonattainment of NAAQS as those obligations relate to emissions from electricity generating units.¹⁰ EPA is conducting environmental justice analyses of the distribution of these emissions and associated public health impacts on overburdened communities.

⁶ Clean Air Act § 403(d).

⁷ For more information, please refer to: <http://www3.epa.gov/airmarkets/progress/reports/index.html>.

⁸ For more information, please refer to: <https://www.epa.gov/airmarkets/power-plant-emission-trends>.

⁹ Clean Air Act § 110(a)(2)(D); also refer to Clean Air Act § 110(c).

¹⁰ Clean Air Act § 110 and § 169A; refer to 40 CFR 52.2312.

EPA manages the Clean Air Status and Trends Network (CASTNET), which monitors ambient ozone, sulfate, and nitrate concentrations, dry sulfur and nitrogen deposition, and other air quality indicators. In addition, EPA participates in the National Atmospheric Deposition Program, which monitors wet deposition of sulfur, nitrogen, and mercury, as well as ambient concentrations of mercury and ammonia. EPA also manages the Long-Term Monitoring (LTM) program to assess how lakes, streams, and aquatic ecosystems are responding to reductions in sulfur and nitrogen emissions. Data from these air quality and environmental monitoring programs, in conjunction with SO₂, NO_x, mercury, and CO₂ emissions data from the Part 75 monitoring program and mercury emissions data from the MATS reporting program, have allowed EPA to develop a comprehensive accountability framework to track the results of its air quality programs. EPA applies this framework to the programs it implements and issues annual progress reports on compliance and environmental results achieved by the Acid Rain Program, CSAPR, and the CSAPR Update, and pollution controls installed and emissions reductions achieved by MATS.¹¹ Required by Congress since FY 2019 in the appropriations reports, these annual progress reports highlight reductions in SO₂ and NO_x emissions, and impacts of these reductions on air quality (e.g., ozone and PM_{2.5} levels), acid deposition, surface water acidity, forest health, and other environmental indicators.

EPA produces several tools to inform the public and key stakeholders about power sector emissions, operations, and environmental data. The Emissions & Generation Resource Integrated Database (eGRID)¹² is a comprehensive source of data on the environmental characteristics of almost all electric power generated in the U.S. Data from eGRID are used by other EPA programs, state energy and air agencies, and researchers. Between 2015 and 2020, eGRID was cited by more than 1,300 academic papers. Power Profiler¹³ is a web application where electricity consumers can see the fuel mix and air emissions rates of their region's electricity and determine the air emissions associated with their electricity use. In keeping with the Agency's renewed commitment to energy equity and environmental justice, EPA is developing analytical and mapping tools to better understand and communicate the impact of electricity generation on low-income communities and communities of color. EPA also operates several initiatives to engage key stakeholders, including working closely with tribal governments to build tribal air monitoring capacity through partnerships with the CASTNET Program. The EmPOWER Air Data Challenge¹⁴ encourages academic researchers to propose how to integrate the EPA emissions and/or environmental data in their research. The Ask Clean Air Markets Division (CAMD) webinars provide an opportunity for stakeholders to ask EPA about the Clean Air Allowance Trading Programs, Part 75 emission reporting program, and the emission and environmental data programs.

EPA also develops multiple models and tools to project future emissions from the power sector to inform EPA's air quality modeling, as well as water and land regulations affecting power plants. The Integrated Planning Model (IPM) is a state-of-the-art, peer-reviewed, dynamic linear programming model that EPA develops to project power sector behavior under future business-as-usual conditions and to examine prospective air pollution control policies throughout the contiguous United States for the entire electric power system. EPA uses IPM, along with the

¹¹ To view the progress reports, please refer to: <http://www3.epa.gov/airmarkets/progress/reports/index.html>.

¹² To view eGRID, please refer to <https://www.epa.gov/egrid>.

¹³ To view Power Profiler, please refer to <https://www.epa.gov/egrid/power-profiler>.

¹⁴ For more information about the challenge, refer to <https://www.epa.gov/airmarkets/empower-air-data-challenge>.

National Energy Modeling System (NEMS) and the Regional Energy Deployment System (ReEDS), to estimate future electricity market conditions and associated pollutant emissions scenarios resulting from legislative and regulatory policies under consideration by Congress and the Administration. The National Electric Energy Data System (NEEDS) includes geographic, operating, air emissions, and other data on existing and planned grid-connected electric generating units across the contiguous United States. EPA updates and publishes NEEDS on a quarterly basis to inform emission modeling projections and to provide timely information to air quality planners and policymakers developing regulations to address power sector pollution. EPA is augmenting these power sector models and tools to include important information pertinent to environmental justice analyses and community-level impacts.

EPA implements the American Innovation and Manufacturing (AIM) Act, enacted to address climate damaging HFCs by phasing down HFC production and consumption, maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment, and facilitating the transition to next-generation technologies through sector-based restrictions.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.1, Improve Air Quality and Reduce Localized Pollution and Health Impacts in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to operate the Clean Air Allowance Trading Programs and the systems to assess compliance with the programs' regulatory requirements and the programs' progress toward the environmental goals required by the Clean Air Act. EPA will work to meet requirements and requests for modeling in support of the power sector and for legal defense of regulatory actions. The Program will continue to support emission reporting for other state and federal programs, including MATS and GHGRP.¹⁵ In FY 2023, EPA anticipates work on several regulatory actions related to power plants including greenhouse gas emission guidelines for existing power plants (replacing the previously-promulgated Clean Power Plan and the Affordable Clean Energy Rule); interstate ozone transport obligations under the 2015 ozone standard; and continued review of the appropriate and necessary finding and risk and technology review for MATS.

This proposal expands EPA's ability to perform advanced power sector analyses to tackle the climate crisis, including developing environmental justice tools to consider the distributional impacts of emissions on overburdened communities.

Allowance tracking and compliance assessment

EPA will allocate SO₂ and NO_x allowances to affected emission sources and other account holders as established in the Clean Air Act¹⁶ and state and federal CSAPR implementation plans. These allowance holdings and subsequent allowance transfers will be maintained in an allowance

¹⁵ Refer to, 40 C.F.R. Part 63, Subpart UUUUU (*National Emission Standards for Hazardous Air Pollutants: Coal and Oil Fired Electric Utility Steam Generating Units*) and 40 C.F.R. Part 98, Subpart D (*Mandatory Greenhouse Gas Reporting: Electricity Generation*).

¹⁶ Clean Air Act §§ 110 and 403.

tracking system (i.e., central database).¹⁷ EPA will annually reconcile each facility's allowance holdings against its emissions to ensure compliance for all affected sources.¹⁸

Emission measurement and data collection and review

EPA will operate the Part 75 emission measurement program to collect, verify, and track emissions of air pollutants and air toxics from approximately 4,300 fossil-fuel-fired electric generating units.¹⁹

Program assessment and communication

EPA will continue to monitor ambient air, deposition, and other environmental indicators through the CASTNET and LTM programs, serve as a part of the National Atmospheric Deposition Program, publish the power sector progress reports required by Congress, and produce other information to communicate the extent of the progress made by the Clean Air Allowance Trading Programs.²⁰ EPA will publish emissions and environmental data on our Air Markets and eGRID websites.

Redesign system applications

In FY 2023, EPA will need to implement new HFC IT regulatory infrastructure to ensure EPA can fulfill its legal obligations under the AIM Act and leverage the Clean Air Act to advance climate and other air quality goals.

EPA will continue the redesign of its Air Markets Program Data (AMPD) website and Emission Collection Monitoring Plan System (ECMPS) software. These mission critical systems support the trading programs, as well as other emissions reporting programs operated by the states (e.g., RGGI) and EPA (e.g., MATS, GHGRP). Reengineering these decade-old systems will enable EPA to enhance the user experience, comply with EPA security and technology requirements, consolidate software systems, and reduce long-term operation and maintenance costs. The Clean Air Markets Program Data will be released in FY 2022 with the sunset of its predecessor, AMPD. ECMPS will be released in FY 2023.

Assistance to states

EPA will work with states to develop emission reduction programs to comply with the Clean Air Act Good Neighbor Provision and Regional Haze program requirements.²¹

Stakeholder engagement

EPA will continue to engage our stakeholder communities through efforts to maintain and strengthen current tribal air monitoring partnerships and build new ones to the extent possible. In addition, EPA has new efforts underway to identify how power plant pollution impacts historically marginalized and underserved communities, and how EPA air rules can mitigate those impacts. EPA also seeks to communicate information about power plant emissions and the contributions to low-income communities and communities of color, and encourage the use of the Clean Air Allowance Trading Programs' data for scientific analysis and communication through various

¹⁷ Clean Air Act §§ 110 and 403.

¹⁸ Clean Air Act §§ 110 and 404-405, and state CSAPR implementation plans.

¹⁹ Clean Air Act § 412; Clean Air Act Amendments of 1990. P.L. 101-549 § 821; and 40 C.F.R. Part 63, Subpart UUUUU.

²⁰ Government Performance and Results Act § 1115.

²¹ Clean Air Act § 110(a)(2)(D).

programs and tools such as CAMD(ej), EmPOWER Air Data Challenge, and Ask CAMD webinars.

Policy and regulatory development

EPA will contribute multipollutant and multi-media (air, water, land) power sector analyses informing EPA's policy agenda to tackle the climate crisis and protect public health and the environment, including environmental justice analyses to consider the distributional impacts of emissions on overburdened communities. Analytic and policy topics addressing climate change and air pollution that could be analyzed include a wide range of power sector actions under the CAA, as well as analysis of interactions between alternative vehicle electrification futures and associated changes in electric power generation.

Performance Measure Targets:

(PM NOX) Tons of ozone season NOx emissions from electric power generation sources.	FY 2022 Target	FY 2023 Target
	355,000	344,000

For more information on program performance, please visit:
<https://www3.epa.gov/airmarkets/progress/reports/>.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$703.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$9,667.0 / +18.3 FTE) This program change is an increase in support for emissions trading programs, including associated data systems, that protect human health and the environment by delivering substantial emissions reductions in the power sector of SO₂, NO_x, and hazardous air pollutants. This also supports allowance trading IT infrastructure, including systems related to the implementation of the AIM Act which will reduce HFCs. This proposal expands EPA's ability to perform advanced power sector analyses to tackle the climate crisis, including developing environmental justice tools to consider the distributional impacts of emissions on overburdened communities. This investment includes \$3.176 million in payroll.

Statutory Authority:

Clean Air Act.

Climate Protection

Program Area: Clean Air and Climate

Goal: Tackle the Climate Crisis

Objective(s): Reduce Emissions that Cause Climate Change

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$91,632</i>	<i>\$97,000</i>	<i>\$125,216</i>	<i>\$28,216</i>
Science & Technology	\$7,057	\$7,895	\$10,169	\$2,274
Total Budget Authority	\$98,689	\$104,895	\$135,385	\$30,490
Total Workyears	211.3	214.1	236.9	22.8

Program Project Description:

EPA's Climate Protection Program is working to tackle the climate crisis at home and abroad through an integrated approach of regulations, partnerships, and technical assistance. This Program takes strong action to limit carbon dioxide (CO₂) and methane emissions as well as working to reduce high-global warming potential greenhouse gases (GHG), like hydrofluorocarbons (HFCs), that will help the U.S. realize near-term climate benefits. Through this program, EPA works with federal, state, tribal, local government agencies and key GHG emitting sectors to tackle the climate crisis and deliver environmental and public health benefits for all Americans. EPA builds partnerships, provides tools, and verifies and publishes GHG data, economic modeling, and policy analysis, all of which increase the understanding of climate science, impacts, and protection. EPA also extends this expertise internationally and plays critical roles in shaping and advancing international agreements and solutions. This international collaboration helps to both improve public health and air quality in the United States and level the global playing field for American businesses.

Greenhouse Gas Reporting Program:

EPA implements the U.S. Greenhouse Gas Reporting Program under the Clean Air Act. In 2007, Congress directed EPA to "require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the U.S." EPA annually collects data from over 8,100 facilities from 41 industrial source categories, including suppliers (e.g., producers, importers, and exporters of GHGs) in the U.S. and uses this data to improve estimates included in the *Inventory of U.S. Greenhouse Gas Emissions and Sinks*; support federal and state-level policy and regulatory development; share GHG emissions; and share data with state and local governments, tribes, community groups, industry stakeholders, academia, the research community, and the general public.

Inventory of U.S. Greenhouse Gas Emissions and Sinks:

To fulfill U.S. Treaty obligations, under Article 4 of the 1992 Framework Convention on Climate Change, which was ratified by the U.S. Senate, EPA prepares the annual *Inventory of U.S. Greenhouse Gas Emissions and Sinks*. The *Inventory* provides information on total annual U.S.

emissions and removals by source, economic sector, and GHG. The Inventory is used to inform U.S. policy and for tracking progress towards the U.S. Nationally Determined Contribution under the Paris Agreement. EPA leads the interagency process of preparing the *Inventory*, working with technical experts from numerous federal agencies, including the Department of Energy's Energy Information Administration, Department of Agriculture, Department of Defense, U.S. Geological Survey, and academic and research institutions.

Managing the Transition from Ozone-Depleting Substances:

EPA implements efforts directed by Section 612 of the CAA to ensure a smooth transition away from ozone-depleting substances (ODS) to safer alternatives. Applying a comparative risk assessment, the Significant New Alternatives Policy (SNAP) program evaluates the health and environmental effects of alternatives in the sectors and subsectors where ODS and high-global warming potential HFCs are used, providing additional substitute options in key sectors such as refrigeration and air conditioning.

Phasing Down HFCs:

EPA implements the American Innovation and Manufacturing (AIM) Act, enacted to address climate damaging HFCs by phasing down HFC production and consumption, maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment, and facilitating the transition to next-generation technologies through sector-based restrictions. This phasedown will decrease the production and import of HFCs in the United States by at least 85 percent by 2036, resulting in significant climate benefits.

ENERGY STAR:

ENERGY STAR provides information that consumers and businesses rely on to make informed decisions to reduce energy use, save money, and reduce harmful air pollutants. By reducing energy use, ENERGY STAR lowers costs for states and local governments as they design and implement plans to meet their air quality and climate goals. ENERGY STAR is the national symbol for energy efficiency, recognized by more than 90 percent of American households, and is a critical tool to fight the climate crisis.

ENERGY STAR achieves significant and growing GHG reductions by promoting the adoption of cost-effective, energy-efficient technologies and practices in the residential, commercial, and industrial sectors. The Program yields significant environmental and economic results through its network of thousands of partners. In 2019 alone, ENERGY STAR and its partners helped American families and businesses save nearly 500 billion kilowatt-hours of electricity and avoid \$39 billion in energy costs. These savings resulted in emission reductions of nearly 390 million metric tons of GHGs (roughly equivalent to 5 percent of U.S. total GHG emissions) and more than 470 thousand tons of criteria air pollutants (SO₂, NO_x, PM_{2.5}). This reduction in criteria pollutants is estimated to result in \$7 billion to \$17 billion in public health benefits.²² These investments in turn drive job creation across the economy. More than 800,000 Americans are employed in manufacturing or installing ENERGY STAR certified equipment alone – nearly 35 percent of all

²² For more information on ENERGY STAR's environmental, human health, and economic impacts, please see here: https://www.energystar.gov/about/origins_mission/impacts. For more information on ENERGY STAR calculation methods, see the Technical Notes, available here: <https://cmadmin.energystar.gov/sites/default/files/asset/document/Technical%20Notes.pdf>.

energy efficiency jobs in 2019, with energy efficiency accounting for 40 percent of all energy sector jobs overall.²³

EPA manages the ENERGY STAR Program with clearly defined support from the U.S. Department of Energy. Specifically, EPA manages and implements the specification development process for more than 75 product categories and the ENERGY STAR Most Efficient recognition program; the ENERGY STAR Residential New Construction Program for single-family homes, manufactured homes, and multifamily buildings; and the ENERGY STAR commercial and industrial programs. This work includes activities such as certification monitoring and verification, setting performance levels for building types, managing and maintaining the ENERGY STAR Portfolio Manager tool to measure and track energy use in buildings, and managing the integrity of the ENERGY STAR brand.

ENERGY STAR also supports equitable energy solutions that can deliver significant cost savings for low-income families and other overburdened and underserved populations. The Program prioritizes outreach to low-income populations on products that have the greatest opportunity to save energy and dollars. The ENERGY STAR Program also looks for affordable alternatives to products that may be cost-prohibitive, such as replacement windows (e.g., storm windows). In addition, roughly 20 percent of ENERGY STAR home builder partners work in affordable housing, including 550 Habitat for Humanity affiliates (18,000 ENERGY STAR certified homes constructed), 80 manufactured housing plants (more than 66,500 ENERGY STAR certified manufactured homes built), and the multifamily sector (more than 75 percent of ENERGY STAR multifamily high-rise projects are identified as affordable housing).²⁴

Renewable Energy Programs:

EPA works with industry and other key groups to encourage efficient, clean technologies and promote climate leadership. EPA's Green Power Partnership drives voluntary participation in the U.S. green power market. This program provides information, technical assistance, and recognition to companies that use green power at or above minimum partnership benchmarks. At the end of calendar year 2020, more than 700 EPA Green Power Partners reported the collective use of nearly 70 billion kilowatt-hours of green power annually. This amount of green power use represents nearly 43 percent of the U.S. voluntary green power market (that goes beyond required purchases under state renewable portfolio standards). Since 2001, the Program has helped prevent nearly 280 million metric tons of GHG emissions.²⁵ In addition, EPA's Green Power Partnership also recognizes more than 100 EPA Green Power Communities nationwide that advance green power access and use to their community members. The Combined Heat and Power Partnership offers tools and services to facilitate and promote cost-effective, highly efficient Combined Heat and Power (CHP) projects. The Center for Corporate Climate Leadership establishes norms of climate leadership by encouraging organizations with emerging climate objectives to identify and

²³ NASEO and Energy Futures Initiative. (2020). U.S. Energy and Employment Report. <https://www.usenergyjobs.org/> (link is external). The survey does not account for retail employment.

²⁴ For more information on ENERGY STAR's environmental, human health, and economic impacts, please see here: https://www.energystar.gov/about/origins_mission/impacts. For more information on ENERGY STAR calculation methods, see the Technical Notes, available here: <https://cmadmin.energystar.gov/sites/default/files/asset/document/Technical%20Notes.pdf>.

²⁵ For more information on EPA's Green Power Partnership's environmental, human health, and economic impacts, please see here: <https://www.epa.gov/greenpower/green-power-partnership-program-success-metrics>.

achieve cost-effective GHG emission reductions, while helping more advanced organizations drive innovations in reducing their greenhouse gas impacts in their supply chains and beyond.

State, Tribal and Local Climate and Energy Programs:

EPA works with state, tribal and local governments to identify and implement cost-effective programs that reduce GHG emissions, save energy, improve air quality, and mitigate heat island effects. EPA provides tools, data, and technical expertise to help subnational governments implement clean energy policies and programs that reduce emissions, maximize co-benefits, and prioritize low-income communities and communities with environmental justice concerns. The Programs help governments develop emissions inventories, discover best practices for emissions reductions and heat island mitigation, and analyze the emissions and health benefits of clean energy strategies. These programs also highlight the best examples across the country on how to deliver inclusive climate programs and provide resources to help governments deliver energy efficiency and renewable energy to low-income communities.

SmartWay Transport:

Launched in 2004, SmartWay is the only voluntary program working across the entire freight system to comprehensively address economic and environmental goals related to sustainability. Nearly 4,000 businesses that receive, ship, or carry freight rely upon SmartWay supply chain accounting tools and methods to assess, track, and reduce transportation-related carbon, energy use, and air emissions. By accelerating deployment of cleaner, more efficient technologies and operational strategies across supply chains, SmartWay partners have avoided significant amounts of pollution, helping to address the climate crisis and contributing to healthier air for underserved and overburdened communities living close to freight hubs and routes. Improving supply chain efficiency also helps grow the economy and protect and create jobs while contributing to energy security.

EPA is the SmartWay brand manager and is responsible for the specification process for hundreds of product and vehicle categories, including both family (passenger) vehicles and commercial (heavy-duty freight truck and trailer) vehicles, and the SmartWay Partnership and SmartWay Affiliate recognition programs. EPA's technology verification program enables manufacturers to voluntarily demonstrate fuel saving and emission reduction performance using standard testing protocols. SmartWay partner fleets as well as others in the trucking industry use EPA's verified technology lists to identify products that have been demonstrated to save fuel and reduce emissions.

Partnerships to Reduce Methane Emissions:

EPA operates several partnership programs that promote cost-effective reductions of methane by working collaboratively with industry. Methane programs offer excellent opportunities for reducing the concentration of GHGs in the atmosphere and providing an energy resource in the process. Methane is a significant source of GHG emissions and has a relatively short atmospheric lifetime of about 9 to 15 years, which means that reductions made today will yield positive results in the near term. Unlike other GHGs, methane is an important energy resource that allows for cost-effective mitigation. There are many opportunities to recover and re-use or sell methane from the agriculture (manure management), coal mining, oil and gas, and landfill sectors. The AgSTAR program, which is a collaboration between EPA and the Department of Agriculture, focuses on

methane emission reductions from livestock waste management operations through biogas recovery systems. The Coalbed Methane Outreach Program promotes opportunities to profitably recover and use methane emitted from coal mining activities. The Landfill Methane Outreach Program promotes abatement and energy recovery of methane emitted from landfills. The Natural Gas STAR and Methane Challenge programs spur the adoption of cost-effective technologies and practices that reduce methane emissions from the oil and natural gas sector through collaborative partnerships with companies.

EPA also manages the implementation of the Global Methane Initiative (GMI), a U.S. led international public-private partnership that brings together over 45 partner governments and over 700 private sector and non-governmental organizations to advance methane recovery and use. GMI builds on the success of EPA's domestic methane programs and focuses on advancing methane reductions from agriculture, coal mines, landfills, oil and gas systems, and municipal wastewater. With assistance from several agencies—particularly EPA and U.S. State Department—the U.S. Government has supported identification and implementation of more than 1,100 methane mitigation projects since 2005. These projects have reduced methane emissions by about 500 million tons of carbon dioxide equivalent (MMTCO₂e), including approximately 42 MMTCO₂e in 2020. Since 2005, U.S. efforts under the auspices of GMI leveraged more than \$650 million for project implementation and training and provided trainings for more than 50,000 people in methane mitigation.²⁶

Partnerships to Reduce Fluorinated Greenhouse Gas Emissions:

EPA operates partnership programs that promote cost-effective reductions of fluorinated greenhouse gases (FGHG) by working collaboratively with industry. EPA's FGHG partnership programs continue to make significant reductions in potent GHG emissions, such as perfluorocarbons, HFCs, nitrogen trifluoride, and sulfur hexafluoride. Through its partnership programs, EPA works closely with participating industries to identify cost-effective emissions reduction opportunities, recognize industry accomplishments, and facilitate the transition toward environmentally friendlier technologies and chemicals and best environmental practices. Although FGHGs account for a small portion of total U.S. GHG emissions, they have very high global warming potentials.

Science, Economic, and Technical Analyses:

EPA conducts a range of economic, scientific, and technical analyses for CAA regulatory actions and to support the Administration's efforts to address climate change. These efforts include the communication of the science of climate change to the public by providing information on the indicators of climate change, climate risks, and actions that can be taken to mitigate the impacts. EPA applies an analytical framework to evaluate avoided risk and economic impacts of GHG mitigation. These efforts also include the development of multiple models and tools to project future multipollutant emissions (including GHGs) from the power sector to inform EPA's air quality modeling and air, water, and land regulations affecting power plants. EPA applies modeling tools and expertise across a wide range of high priority work areas, including supporting U.S. participation in the Paris Agreement, providing analysis and technical expertise to the U.S. Special Presidential Envoy for Climate and other interagency partners to support U.S. engagement

²⁶For more information on the Global Methane Initiative's environmental, human health, and economic impacts, please see here: <https://www.epa.gov/gmi/us-government-global-methane-initiative-accomplishments>.

with foreign governments on climate change, and conducting legislative analyses as requested by Congressional staff. Furthermore, EPA provides critical, world-renowned non-CO₂, agriculture, and forestry analyses and participates in the interagency process to improve and apply the models and analyses as needed. Finally, EPA is expanding its ability to conduct equity and environmental justice analyses to identify policy implications and improve collaboration with underserved and frontline communities.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 1/Objective 1.1, Reduce Emissions that Cause Climate Change in the *FY 2022 - 2026 EPA Strategic Plan*. Work in this program also directly supports progress toward the Agency Priority Goal: *Phase down the production and consumption of hydrofluorocarbons (HFCs)*. By September 30, 2023, annual U.S. consumption of HFCs will be 10 percent below the baseline²⁷ of 303.9 million metric tons of carbon dioxide equivalent (MMTCO_{2e}) consistent with the HFC phasedown schedule in the American Innovation and Manufacturing (AIM) Act and codified in the implementing regulations. A 10 percent reduction would decrease the U.S. consumption limit to less than 273.5 MMTCO_{2e} in 2023.

In FY 2023, EPA is requesting \$21.4 million and 20.5 FTE in additional resources to help reduce greenhouse gas emissions while also addressing environmental justice through an integrated approach of regulations, partnerships, and technical assistance. The increase enables EPA to take strong action on CO₂ and methane as well as high-global warming potential climate pollutants such as HFCs; restores the capacity of EPA's climate partnership programs to provide essential contributions to our nation's climate, economic, and justice goals; and strengthens EPA's capacity to apply its modeling tools and expertise across a wide range of high priority work areas including supporting U.S. participation in the Paris Agreement.

In FY 2023, EPA will continue to implement the Greenhouse Gas Reporting Program covering a total of 41 sectors, with approximately 8,100 reporters. In FY 2023, EPA will verify 98 percent of Annual Greenhouse Gas Reports from these sectors. Focus areas for the Program will include:

- Completing a pending rulemaking to update, streamline, and enhance the scope and accuracy of the GHG Reporting Program across multiple sectors, including oil and gas as well as carbon capture projects;
- Aligning the electronic GHG reporting tool with those regulatory amendments;
- Ensuring that the electronic reporting system continues to meet all Agency security requirements;

²⁷ EPA's final rule, "[Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the AIM Act](#)" establishes the HFC production and consumption baselines from which the phasedown steps are measured. Using the equation provided in the AIM Act and based on the data available to the Agency through the Greenhouse Gas Reporting Program (GHGRP) and outreach conducted for this rulemaking, EPA determined that the production baseline is 382.6 million metric tons of exchange value equivalent (MMTEVe) and the consumption baseline is 303.9 MMTEVe. EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the GWPs included in IPCC (2007). Therefore, one million metric tons of carbon dioxide equivalent (MMTCO_{2e}) is numerically equivalent to one MMTEVe. EPA is using the measurement MMTCO_{2e} in this document since the public is more familiar with this term than MMTEVe.

- Ongoing system enhancements to the GHG Reporting Program's electronic GHG reporting tool (eGGRT) to accommodate HFC supply data submitted by industry to meet the reporting requirements of the AIM Act regulations;
- Conducting a QA/QC and verification process through a combination of electronic checks, staff reviews, and follow-up with facilities when necessary;
- Publishing reported data while enhancing the Facility Level Information on GHG Tool (FLIGHT) mapping feature to visually display the distribution of GHG emissions and sources of GHG supply in areas of the country of environmental justice and equity concern; and
- Continued review and approval of the increased number of Carbon Capture and Storage Monitoring Reporting and Verification plans that are submitted to the GHG Reporting Program due to changes in the IRS 45Q tax code.

In addition, EPA will work to complete the annual *Inventory of U.S. Greenhouse Emissions and Sinks*. Focus areas will include:

- Continuing improvements to inventory methodologies in areas such as oil and gas, land-use, and waste, consistent with Intergovernmental Panel on Climate Change guidelines, and to meet upcoming Paris reporting requirements;
- Disaggregating the national *Inventory of U.S. Greenhouse Gas Emissions and Sinks* to the state level and publishing the results annually through the online Data Explorer tool;
- Furthering work to make use of advanced observation technologies, including through developing the capacity to publish an annual gridded methane inventory, which is essential for use by atmospheric researchers and as input to other studies;
- Creating a new GHG emission calculator, linked to Portfolio Manager, to develop building GHG inventories that fully comply with accounting protocols and local mandates; and
- Enhancing GHG inventory tools and technical assistance to states, local governments, and tribes.

In FY 2023, EPA will continue to implement the ENERGY STAR Program, partnering with more than 840 utilities (representing an annual collective investment of \$8.4 billion in energy efficiency programs) from state and local governments, plus nonprofits. These partners leverage ENERGY STAR in their efficiency programs to achieve GHG reductions in major economic sectors, consistent with national commitments.

ENERGY STAR will work in the Residential Sector to enable and accelerate the adoption of energy efficiency. In FY 2023, the Program will:

- Update up to five product specifications for ENERGY STAR-labeled products to ensure top efficiency performance;
- Further amend up to three ENERGY STAR specifications in response to changes in Department of Energy (DOE) minimum efficiency standards and test procedures;
- Maintain third-party certification to ensure consumer confidence in more than 75 categories for ENERGY STAR labeled products, which includes overseeing 500 recognized laboratories worldwide and 20 certification bodies;
- Further drive long-term climate goals by advancing the cutting edge of the current and

future market through the ENERGY STAR Emerging Technology Awards and the ENERGY STAR Most Efficient recognition program, which certifies 3,600 product models from over 280 manufacturers;

- Leverage the market power of the ENERGY STAR brand through the ENERGY STAR Home Upgrade to quickly scale home energy retrofits featuring the high impact, broadly applicable measures (e.g., heat pumps and heat pump water heaters) that are critical to efficiently decarbonizing the residential sector;
- Target energy-saving resources to underserved and energy burdened households with expanded efforts to leverage the ENERGY STAR market power to advance utility-scale uptake of equitable financing approaches for home energy upgrades, a key opportunity to support environmental justice goals;
- Implement critical program requirement updates for EPA's ENERGY STAR Residential New Construction programs, including development of a substantially revised program specification for manufactured homes in response to new code requirements for this sector to ensure at least 10 percent energy savings compared to the new code; and
- Develop and deploy a new ENERGY STAR-based whole-house certification program to recognize the next generation of new homes and apartments that incorporate advanced

efficient electric technologies such as heat pumps, heat pump water heaters, induction cooking, and electric vehicle charging capability.

In addition, ENERGY STAR will continue to partner with businesses and public-sector organizations to advance energy efficiency in the commercial sector. In FY 2023, the Program will:

- Continue to operate and maintain ENERGY STAR Portfolio Manager, as well as deliver critical enhancements to accommodate the more than 300 commercial software vendors and utilities that use the tool, and add reporting and tracking functionality and enhanced data quality checks to increase support to corporate and federal, state and local government users;
- Update and expand ENERGY STAR building scores, used to understand how a building's energy consumption compares with similar buildings nationwide;
- Verify the efficiency of more than 6,000 buildings with EPA's ENERGY STAR label, including conducting approximately 250 spot audits;
- Provide guidance and technical assistance to the roughly 50 local governments and states that have adopted mandatory or voluntary energy benchmarking and disclosure policies and/or building performance standards that require use of EPA's ENERGY STAR Portfolio Manager; and
- Produce a public dataset and data visualization tools from Portfolio Manager to understand the range of energy use and intensity across multiple building types and geographic locations.

ENERGY STAR will continue to work with partners in the industrial sector to improve efficiency and reduce costs while protecting the environment. In FY 2023, the Program will:

- Continue to support ENERGY STAR industrial partners across 33 diverse industrial sectors through webinars, focus industry meetings, company-to-company mentoring, and recognition of efficient plants;
- Update and develop new Energy Performance Indicators to incorporate key factors that impact energy use in the plant and converts electricity inputs to source energy; and
- Work with, review, and audit an expected 200 industrial plants applications registered to achieve the ENERGY STAR Challenge for Industry in which industrial sites commit to reducing their energy intensity by 10 percent within five years.

In FY 2023, EPA will implement the Green Power Partnership and accelerate the transition to a carbon-pollution free electricity sector. In FY 2023, the Program will:

- Update and develop new credible resources, educational tools, and recognition of actions and leadership to incentivize all sectors of Green Power Partners;
- Drive market leadership and impact by recognizing the actions of partnering organizations that significantly advance the development of green power markets and renewable energy development; and
- Partner with over 120 Green Power Communities to encourage local efforts to increase their use of and investment in renewable electricity, including underserved communities that have traditionally lacked adequate access to green power.

In FY 2023, EPA will implement other partnerships to achieve GHG reductions in major economic sectors, consistent with national climate commitments. Focus areas of the programs will include:

- Implementing the Center for Corporate Climate Leadership program, promoting cost-effective corporate GHG management practices that support the measurement and management of corporate-wide emissions; and
- Developing and enhancing guidance and tools to assist public companies with GHG emission reductions and climate disclosure of GHG emissions in their operations and supply chains.
- Operating the CHP Partnership, promoting efficient and environmentally beneficial CHP;

In FY 2023, EPA will implement the State, Tribal and Local Climate and Energy Program to support state and local activity that is essential to tackling the climate crisis and promoting equity and environmental justice in clean energy programs. Focus areas of the Program will include:

- Providing technical support to dozens of state, tribal and local governments as they implement climate and clean energy policies for efficiency, renewables, and beneficial electrification; provide increased support on equity and environmental justice in clean energy policy design;
- Updating major analytical tools to enable state, tribal and local governments to develop and analyze GHG inventories, pollutant emissions reductions, and public health co-benefits of efficiency and renewables; expand focus of tools to analyze beneficial electrification;
- Conducting significant outreach and training on tools with a focus on new tools such as the Energy Savings and Impacts Scenario Tool, which helps users assess a set of long-term

environmental, health, economic and equity impacts from utility energy efficiency programs;

- Launching updates to EPA's State Guide to Action on Clean Energy by hosting webinars and convenings or workshops for state policymakers; and
- Helping local governments implement heat island reduction initiatives that are a priority of communities with environmental justice concerns by promoting best practices, updating technical resources, and convening stakeholders.

In FY 2023, EPA will continue to achieve significant reductions in climate and other harmful emissions from freight transportation by expanding SmartWay efforts to:

- Develop and refine GHG accounting protocols for freight carriers and their customers;
- Continue to provide expertise and serve as a technical test bed in support of the Agency's efforts to reduce GHG emissions;
- Transition SmartWay partner tools to an online platform making it easier to benchmark and track performance and expanding access to SmartWay for smaller businesses;
- Encourage adoption of SmartWay approaches globally under international frameworks and agreements, including co-administering SmartWay with Canada and continue a SmartWay pilot in Mexico;
- Contribute to development and dissemination of an International Organization for Standardization (ISO) standard to calculate GHG from transportation operations; and,
- Update GHG requirements for federal purchases of passenger vehicles under the Energy Independence and Security Act as needed.

In FY 2023, EPA will continue to mitigate domestic methane and fluorinated greenhouse gases emissions by implementing partnership outreach programs focused on providing technical information on best practices and cost-effective technologies in the petroleum and natural gas systems, municipal solid waste landfills, livestock manure anaerobic digestion and biogas systems, coal mining, and electric power transmission sectors. EPA's GreenChill Advanced Refrigeration Partnership Program will continue to work with food retail partners transitioning from ozone-depleting substances and HFCs to promoting lower global warming potential and improved more energy-efficient technologies. The Responsible Appliance Disposal Program partners achieve emissions reductions by collecting and disposing of refrigerant-containing appliances.

EPA also will continue implementing and promoting global methane mitigation opportunities across multiple sectors (oil and gas, coal mining, municipal solid waste, wastewater, agriculture/manure management) in support of the GMI by:

- Running the secretariat of the GMI, coordinating and organizing overall activities;
- Providing technical leadership across multiple sectors;
- Coordinating with key methane-focused initiatives such as United Nations Economic Commission for Europe, Climate & Clean Air Coalition, and the International Energy Agency; and
- Serving Administration-level priorities, such as the Global Methane Pledge.

In FY 2023, EPA will maintain and enhance the climate change website by updating scientific material and further developing web products that reach the American public and effectively communicate the causes and effects of climate change and Administration priorities.

EPA also will support the State Department as the technical lead in developing both current and additional measure projections, and compiling information on GHG mitigation policies and measures to assess our progress towards meeting our Nationally Determined Contribution goal. These actions are part of the upcoming U.S. Biennial Report, as required by the U.N. Framework Convention on Climate Change. EPA also will prepare for the transition to the Paris Agreement requirements and submit new Biennial Transparency Reports in calendar year 2024.

EPA will continue our United Nations Framework Convention on Climate Change engagement by serving as negotiators on U.S. delegations, for example, on transparency and markets, and working to assess mitigation potential and information from other countries. EPA also will review national inventory and related reports submitted by other countries, including other major economies such as Brazil, Germany, and China.

EPA will continue to improve work on climate change impacts modeling including how risks and economic impacts can be reduced under mitigation and adaptation scenarios by:

- Advancing the scientific literature on climate impacts through the Climate Change Impacts and Risk Analysis project by publishing sectoral impact methodologies and reduced form approaches to improve analytical and communication capacity;
- Quantifying and monetizing the disproportionate risks of climate change on socially vulnerable populations;
- Continuing to make the Climate Change Indicators more accessible through enhanced visualization tools; and
- Collaborating with the interagency U.S. Global Change Research Program through participation in the National Climate Assessment and other key Program activities.

EPA also will analyze program data on GHG emissions from petroleum and natural gas facilities and support Agency regulatory development by:

- Developing more detailed oil and gas projections to support the nationally determined contributions under the Paris Agreement; and
- Performing technical analyses, regulatory development, regulatory impact analyses, and litigation support.

In FY 2022, through significant contributions to the Interagency Work Group, EPA is expected to complete work to finalize the Social Cost of Greenhouse Gases (SC-GHG) and recommend a process for reviewing and updating SC-GHG as required under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. The final values are key to quantifying the benefits of actions across the federal government and beyond to address climate change. In FY 2023, we will engage in research in response to the IWG

recommendations for an ongoing updating process for the SC-GHG to ensure that they continue to reflect the latest science.²⁸

Performance Measure Targets:

(PM REP) Percentage of Annual Greenhouse Gas Emission Reports verified by EPA before publication.	FY 2022 Target	FY 2023 Target
	98	98
(PM CPP) Million metric tons of carbon dioxide equivalent reduced annually by EPA's climate partnership programs.	FY 2022 Target	FY 2023 Target
	486.9	500.7
(PM HFC) Remaining U.S. consumption of hydrofluorocarbons (HFCs).	FY 2022 Target	FY 2023 Target
	273.5	273.5

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,791.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$21,425.0 / +20.5 FTE) This program change is an increase for programs under this program project that help reduce greenhouse gas emissions while also addressing environmental justice through an integrated approach of regulations, partnerships, and technical assistance. The increase enables EPA to take strong action on CO₂ and methane as well as high-global warming potential climate pollutants, such as HFCs, as directed by the AIM Act; restores the capacity of EPA's climate partnership programs to provide essential contributions to our nation's climate, economic, and justice goals; and strengthens EPA's capacity to apply its modeling tools and expertise across a wide range of high priority work areas including supporting U.S. participation in the Paris Agreement. This investment includes \$3.692 million in payroll.
- (+\$5,000.0) This program change is an increase for EPA to work closely with NASA on prototyping capabilities for a greenhouse gas monitoring and information system that will integrate data from a variety of sources with a goal of making data more accessible and usable to federal, state, and local governments, researchers, the public, and other users.

²⁸ On March 16, 2022, the Fifth Circuit Court of Appeals stayed an injunction issued by the U.S. District Court for the Western District of Louisiana related to the social cost of carbon metric.

Statutory Authority:

Clean Air Act; Global Change Research Act of 1990; Global Climate Protections Act; Energy Policy Act of 2005 § 756; Pollution Prevention Act §§ 6602-6605; National Environmental Policy Act (NEPA) § 102; Clean Water Act § 104; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) § 8001; American Innovation and Manufacturing (AIM) Act.

Federal Stationary Source Regulations

Program Area: Clean Air and Climate

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Improve Air Quality and Reduce Localized Pollution and Health Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$19,317</i>	<i>\$20,733</i>	<i>\$41,617</i>	<i>\$20,884</i>
Total Budget Authority	\$19,317	\$20,733	\$41,617	\$20,884
Total Workyears	107.4	108.5	149.5	41.0

Program Project Description:

The Clean Air Act (CAA) requires EPA to take action to improve and protect air quality and limit emissions of harmful air pollutants from a variety of sources. The CAA directs EPA to set National Ambient Air Quality Standards (NAAQS) for six “criteria” pollutants considered harmful to public health and the environment. The NAAQS pollutants are particulate matter (PM), ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), carbon monoxide (CO), and lead (Pb). The CAA requires EPA to review the science upon which the NAAQS are based and the standards themselves every five years. These national standards form the foundation for air quality management and establish goals that protect public health and the environment. Section 109 of the CAA Amendments of 1990 established two types of NAAQS. Primary standards are set at a level requisite to protect public health with an adequate margin of safety. Secondary standards are set at a level requisite to protect public welfare from any known or anticipated adverse effects.

Sections 111, 112, and 129 of the CAA direct EPA to take actions to control air emissions of toxic, criteria, and other pollutants from stationary sources. Specifically, to address air toxics, the CAA Section 112 Program provides for the development of National Emission Standards for Hazardous Air Pollutants (NESHAP) for major sources and area sources; the assessment and, as necessary, regulation of risks remaining after implementation of NESHAP that are based on Maximum Available Control Technology (MACT); the periodic review and revision of the NESHAP to reflect developments in practices, processes, and control technologies; and associated national guidance and outreach. In addition, EPA must periodically review, and, where appropriate, revise both the list of air toxics subject to regulation and the list of source categories for which standards must be developed.

The CAA Section 111 program requires issuing, reviewing, and periodically revising, as necessary, New Source Performance Standards (NSPS) for certain pollutants from listed categories of new, modified, or reconstructed sources of air emissions; issuing emissions guidelines for states to apply to certain existing sources; and providing guidance on Reasonably Available Control Technology through issuance and periodic review and revision of control technique guidelines. The CAA Section 129 program further requires EPA to develop and periodically review standards of performance and emissions guidelines covering air emissions from waste combustion sources.

Sections 169A and 169B of the CAA require protection of air quality related values (AQRV) for 156 congressionally mandated national parks and wilderness areas, known as Class I areas. Visibility is one such AQRV, and Congress established a national goal of returning visibility in the Class I areas to natural conditions, i.e., the visibility conditions which existed without manmade air pollution. The Regional Haze Rule sets forth the requirements that state plans must satisfy to make reasonable progress towards meeting this national goal.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.1, Improve Air Quality and Reduce Localized Pollution and Health Impacts in the *FY 2022 - 2026 EPA Strategic Plan*.

NAAQS

The President directed EPA to review the 2020 PM NAAQS and the 2020 Ozone NAAQS in accordance with Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. EPA has requested resources in FY 2023 to better incorporate science and input from the reestablished Clean Air Scientific Advisory Committee and to assess information received during the public process for rulemakings to complete these reviews. In FY 2023, EPA will continue reviewing the NAAQS and make revisions, as appropriate, and has requested resources commensurate to support these reviews. Each review involves a comprehensive reexamination, synthesis, and evaluation of scientific information, the design and conduct of complex air quality and risk and exposure analyses, and the development of a comprehensive policy assessment providing analysis of the scientific basis for alternative policy options.

In FY 2023, EPA will initiate a multi-phased process for improving air pollution benefits analysis methods to improve the science it uses to quantify benefits from air quality regulations. This is one of the learning priority areas as part of the Agency's Learning Agenda in the *FY 2022-2026 EPA Strategic Plan*. EPA will develop a draft benefits *Guidelines* document outlining best practices for incorporating new scientific information into methods for benefits analysis. This will be followed by additional reviews of specific methods and applications. This effort will help ensure transparency and confidence in the process for selecting and applying the latest science in benefits analysis. EPA also will improve tools and approaches to enable more robust analysis of program impacts on communities with environmental justice concerns and vulnerable populations. EPA will work to achieve and maintain compliance with existing standards. These include the ozone standards established in 2015, 2008, 1997, and 1979; the 1987 PM₁₀ standards; the 2012, 2006, and 1997 PM_{2.5} standards; the 2008 and 1978 lead standards;²⁹ the 2010 NO₂ standard;³⁰ the 1971 CO standard; and the 2010 SO₂ standard.³¹ EPA, in close collaboration with states and tribes, will work to improve air quality in areas not in attainment with the NAAQS, including assisting states and tribes in developing CAA-compliant pollution reduction plans.

²⁹ In September 2016, EPA completed the review of the 2008 Lead NAAQS and retained the standards without revision.

³⁰ In April 2018, EPA completed the review of the 2010 NO₂ NAAQS and retained the standards without revision.

³¹ In February 2019, EPA completed the review of the 2010 SO₂ NAAQS and retained the standards without revision.

Air Toxics

Section 112(d)(6) of the CAA requires EPA to review and revise, as necessary, all NESHAP (for both major and area sources) every eight years. These reviews include compiling information and data already available to the Agency; collecting new information and emissions data from industry; reviewing emission control technologies; and conducting economic analyses for the affected industries needed for developing regulations. Similarly, Section 112(f) of the CAA requires EPA to review the risk that remains after the implementation of MACT standards within eight years of promulgation. In addition, Section 112 requires EPA to periodically review, and, where appropriate, revise both the list of air toxics subject to regulation and the list of source categories for which standards must be developed. The CAA Section 129 Program further requires EPA to develop and periodically review standards of performance and emissions guidelines covering air emissions from waste combustion sources.

In FY 2023, EPA will undertake multiple CAA reviews and associated rulemakings. The air toxics program will prioritize conducting reviews of NESHAP for more than 32 source categories, many of which are subject to court-ordered or court-entered dates or are actions otherwise required by courts, as well as ethylene oxide source categories such as commercial sterilizers and chemical sectors. EPA also expects to undertake actions related to reviewing and revising the list of hazardous air pollutants, as Section 112 requires. EPA expects to propose or promulgate more than 20 rules in FY 2023. In meeting the requirements of Executive Order 13990, EPA also will continue review of the Mercury and Air Toxics Standards for power plants, including the appropriate and necessary finding and risk and technology review, and will take appropriate action resulting from that review in FY 2023. EPA will enhance risk assessment capabilities to better identify and determine impacts of exposures to air toxics on communities. The Program will prioritize its work, as resources allow, with an emphasis on meeting court-ordered deadlines, and also incorporate environmental justice considerations as part of the decision-making process.

As called for in the Administrator's April 27, 2021, *Memorandum Regarding Per- and Polyfluoroalkyl Substances*,³² EPA will take actions to address PFAS pollution. The Agency's new EPA Council on PFAS will collaborate on cross-cutting strategies; advance new science; develop coordinated policies, regulations, and communications; and engage with affected states, tribes, communities, and stakeholders. This includes consideration of appropriate actions using existing CAA authorities.

As part of a forward-looking air toxics strategy, EPA will address these regulatory and emerging issues, and improve access to air toxics data. The Agency will transition to an approach to share air toxics data faster and more regularly to the public, allowing for increased transparency and the ability to see trends and risks over time. By 2023, EPA will report the most current air toxics data each year in the annual Air Trends Report and an online interactive tool instead of the current three - to four - year cycle and provide that data at increased spatial resolution.

NSPS

Section 111 of the CAA requires EPA to set NSPS for new, modified, or reconstructed stationary sources of air emissions in categories that have been determined to cause, or significantly

³² https://www.epa.gov/sites/default/files/2021-04/documents/per-and_polyfluoroalkyl_substances.memo_.signed.pdf.

contribute to, air pollution that may endanger public health or welfare. Section 111 also requires EPA, at least every eight years, to review and, if appropriate, revise NSPS for each source category for which such standards have been established. Under CAA Section 111, EPA must establish emission guidelines for existing sources for which air quality criteria have not been issued, are not included in the list published under Section 108(a) or are emitted from a source category that is regulated under Section 112, but to which a standard of performance would apply if such an existing source were a new source.

In meeting the requirements of Executive Order 13990 and as part of the Administration's comprehensive approach to tackling the climate crisis, EPA also will issue rules to reduce CO₂ and methane from power plants and oil and gas facilities under Section 111. In FY 2023, EPA expects to finalize actions for the oil and gas sector that were proposed in FY 2022. The oil and natural gas industry is the largest industrial source of U.S. emissions of methane and its facilities and operations also emit smog-forming volatile organic compounds and toxic air pollutants such as benzene. Executive Order 13990 also directs EPA to revise and address as appropriate the regulation of GHGs from fossil-fuel fired power plants. Electricity production generates the second largest share of GHG emissions. EPA will carefully craft an equitable approach informed by engagement with communities and a fresh look at pertinent policies, technology, and data. EPA plans to propose emission guidelines and review new source performance standards under Section 111 in FY 2023. These actions are key steps toward EPA's commitment to deliver public health protections from these pollutants for communities across America.

In FY 2023, EPA will work to fulfill the CAA's Section 111 requirements for approximately fifteen source categories in 18 rulemaking actions, all of which are subject to court or executive orders or are in litigation.

In addition, under Section 129 of the CAA, in FY 2023 EPA plans to propose at least one rule regarding incineration and control technologies that supports other rules issued under Section 129.

EPA also will undertake other projects, such as those required by statute or executive order, such as overdue NSPS and area source technology reviews related to source categories in addition to those described above. EPA will continue work on case-by-case regional and national NESHAP and NSPS applicability determinations.

Performance Measure Targets:

(PM NAAQS) Percentage of air quality improvement in counties not meeting current NAAQS.	FY 2022 Target	FY 2023 Target
	7	8
(PM NAAQS2) Percentage of people with low SES living in areas where the air quality meets the PM_{2.5} NAAQS.	FY 2022 Target	FY 2023 Target
	90	93

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,708.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefit costs.
- (+\$16,412.0 / +39.0 FTE) This program change is an increase to support the regulation of stationary sources of air pollution through developing and implementing emissions standards, regulations, and guidelines. This investment includes \$6.974 million in payroll.
- (+\$2,764.0 / +2.0 FTE) This program change is an increase in support implementation of the Foundations for Evidence-Based Policymaking Act of 2018, to help the Agency identify, prioritize, and undertake evidence-building activities and develop evidence-building capacity to inform policy and decisions. This investment includes \$358.0 thousand in payroll.

Statutory Authority:

Clean Air Act.

Federal Support for Air Quality Management

Program Area: Clean Air and Climate

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Improve Air Quality and Reduce Localized Pollution and Health Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$131,015</i>	<i>\$138,020</i>	<i>\$289,010</i>	<i>\$150,990</i>
Science & Technology	\$8,661	\$7,154	\$10,420	\$3,266
Total Budget Authority	\$139,676	\$145,174	\$299,430	\$154,256
Total Workyears	832.7	843.0	945.4	102.4

Program Project Description:

The Federal Support for Air Quality Management Program assists states, tribes, and local air pollution control agencies in the development, implementation, and evaluation of programs for the National Ambient Air Quality Standards (NAAQS); establishes standards for reducing air toxics; and helps reduce haze and improve visibility in some of America's largest national parks and wilderness areas. EPA develops federal measures and regional strategies that help to reduce emissions from stationary and mobile sources; delegated states have the primary responsibility (and tribes may choose to take responsibility) for developing clean air measures necessary to meet the NAAQS and protect visibility. At the core of this program is the use of scientific and technical air quality and emissions data. EPA, working with states, tribes, and local air agencies, develops methods for estimating and measuring air emissions and monitoring air quality concentrations, collects these data, and maintains databases (e.g., Emissions Inventory System, Air Quality System, etc.). EPA also supports training for state, tribal, and local air pollution professionals.

NAAQS Development

The Clean Air Act (CAA) requires EPA to set the NAAQS for six "criteria" pollutants considered harmful to public health and the environment. The NAAQS pollutants are particulate matter (PM), ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), carbon monoxide (CO), and lead (Pb). Section 109 of the CAA Amendments of 1990 established two types of NAAQS - primary and secondary standards. Primary standards are set at a level requisite to protect public health with an adequate margin of safety, including the health of at-risk populations. Secondary standards are set at a level requisite to protect public welfare from any known or anticipated adverse effects, such as decreased visibility and damage to animals, crops, vegetation, and buildings. The CAA requires EPA to review the science upon which the NAAQS are based and the standards themselves every five years. These national standards form the foundation for air quality management and establish goals that protect public health and the environment.

Air Pollution Information Tracking

For each of the six criteria pollutants, under Section 110 of the CAA, EPA tracks two kinds of air pollution information: air pollutant concentrations based on actual measurements in the ambient

(outside) air at monitoring sites throughout the country; and pollutant emissions based on engineering estimates or measurements of the total tons of pollutants released into the air each year.

Air Quality Management Planning

Under CAA Section 110, EPA develops regulations and guidance to clarify requirements for state and local air agencies for developing State Implementation Plans (SIPs) for implementing the NAAQS. EPA works with state and local governments to ensure the technical integrity of emission source controls in SIPs and with tribes on Tribal Implementation Plans (TIPs). EPA also reviews SIPs to ensure they are consistent with applicable requirements of the CAA and takes regulatory action on SIP submissions consistent with CAA responsibilities.

New Source Review (NSR) Preconstruction Permit Program

The NSR preconstruction permit program in Title I of the CAA is a part of state plans to attain and maintain the NAAQS. The two primary aspects of this program are the Prevention of Significant Deterioration program, described in Section 165 of the CAA, and the Nonattainment NSR program, described in various parts of the CAA, including Sections 173 and 182.

Protection of Class I Areas

Sections 169A and 169B of the CAA require protection of visibility for 156 congressionally mandated national parks and wilderness areas, known as Class I areas. Congress established a national goal of returning visibility in the Class I areas to natural conditions (i.e., the visibility conditions that existed without manmade air pollution). The Regional Haze Rule sets forth the requirements that state plans must satisfy to make reasonable progress towards meeting this national goal.

Control of Air Toxics

Toxic air pollutants are known to cause or are suspected of causing increased risk of cancer and other serious health effects, such as neurological damage and reproductive harm. EPA assists state, tribal, and local air pollution control agencies in characterizing the nature and scope of their air toxics issues through modeling, emission inventories, monitoring, and assessments. For example, EPA maintains updated air toxic emission and exposure data, incorporating current toxicity data to provide recent information on air toxics risks from a national perspective. EPA also supports programs that reduce inhalation risk and multi-pathway risk posed by deposition of air toxics to water bodies and ecosystems, facilitates international cooperation to reduce transboundary and intercontinental air toxics pollution, develops risk assessment methodologies for toxic air pollutants, and provides training for air pollution professionals.

The provisions of the CAA that address the control of air toxics are located primarily in Section 112. This section requires issuing National Emission Standards for Hazardous Air Pollutants (NESHAP) for major sources and area sources; the assessment and, as necessary, regulation of risks remaining after implementation of NESHAP that are based on Maximum Available Control Technology (MACT); the periodic review and revision of all NESHAP to reflect developments in practices, processes, and control technologies; and associated national guidance and outreach. In addition, EPA must periodically review, and, where appropriate, revise both the list of air toxics subject to regulation and the list of source categories for which standards must be developed. EPA

has promulgated approximately 180 rules to control air toxics under Section 112 and is continually engaged in their periodic review and revision. EPA will enhance risk assessment capabilities to better identify and determine impacts of exposures to air toxics on communities. The Program will prioritize its work, as resources allow, with an emphasis on meeting court-ordered deadlines and also incorporating environmental justice considerations as part of the decision-making process. Section 129 of the CAA requires a similar approach to review regulations applicable to solid waste incinerators. EPA has promulgated approximately six rules to control air toxics under Section 129 and is continually engaged in their periodic review and revision. In addition to this regulatory work, EPA also provides determinations to states and industry seeking information about source-specific applicability of these regulations. EPA also is making improvements to the database that tracks applicability determinations.

Climate Change

The President has prioritized action to tackle climate change with a focus on an equitable transition to clean energy. These plans call for cuts in greenhouse gas (GHG) pollution to reduce the contribution of human activities to climate change and its impacts on public health, while investing in communities that are on the front line of impacts. EPA issues regulations to limit GHGs and assists states, tribes, and local air pollution control agencies in the development, implementation, and evaluation of programs to reduce GHG pollution. The Program also supports the Agency's work with international partners to combat short-lived climate pollutants. These air pollutants, including black carbon (a component of PM), methane, and tropospheric ozone, are contributing to and accelerating the impacts of climate change.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.1, Improve Air Quality and Reduce Localized Pollution and Health Impacts in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA is requesting an \$100 million increase to develop and implement a community air quality monitoring and notification program to provide real-time data to the public in areas with greatest exposure to harmful levels of pollution, as described in Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad*. This increase supports work to reduce GHG emissions to tackle the climate crisis and ensure equitable environmental outcomes to advance environmental justice.

In FY 2023, EPA also is requesting \$41 million and 91.4 FTE to support critical work to implement climate and clean air regulations and programs. This includes anticipated emission guidelines for existing oil and gas facilities. Section 111(d) of the Clean Air Act provides states with a lead implementing role and considerable flexibility, and the development and implementation of the emission guidelines will require extensive work to develop program implementation infrastructure; engage states, tribal nations, and communities; assess environmental justice impacts; evaluate state plans; and ensure consistent application of the emissions guidelines nationwide. These resources will be used to continue developing a standard reporting system for states to use, or adapt as needed, for submitting plans and tracking their compliance data, and ensuring that communities have access to that data.

This also includes an increase in support for NAAQS review work and implementation activities, many of which are increasingly complex. Critical to successful implementation is timely issuance of guidances, ongoing outreach to states and other entities as well as development of NAAQS implementation tools. EPA will engage with states and develop guidance to assist air programs with meeting implementation deadlines. These critical resources also will support efforts to reduce the SIP backlog as well as ensure timeliness of review of incoming SIPs, permitting needs (both NAAQS and GHG-related), and air quality monitoring and analysis needs. This increase also will enhance EPA's abilities to forecast where smoke will impact people; identify and communicate when and where smoke events are occurring through monitoring and AirNow's Fire and Smoke Map; build local capacity to be Smoke Ready so exposure to smoke is reduced; and strengthen internal as well as state, local and tribal capacity to better coordinate and communicate regarding wildfire smoke and address related regulatory activities.

Addressing Climate Change

EPA expects to take final action under Section 111 in FY 2023 for actions that were proposed in FY 2022 in accordance with Executive Order 13990, which directed EPA to consider "proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and volatile organic compound emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021." This request includes resources to fulfill the President's commitment to engage meaningfully with environmental justice communities during the entire rulemaking process, from pre-proposal through final promulgation and implementation. Executive Order 13990 also directs EPA to revise and address as appropriate the regulation of GHGs from fossil-fuel fired power plants. Electricity production generates the second largest share of GHG emissions. EPA will carefully craft an equitable approach informed by engagement with communities and a fresh look at the policies, technology, and data. EPA plans to propose these emission guidelines in FY 2023.

EPA will continue to work with other countries to take action to address climate change. EPA will consider the results of a range of international assessments to address the climate impacts of short-lived climate pollutants. Reducing emissions of these pollutants can create near-term climate and public health benefits. EPA will continue to identify the most significant domestic and international sources of black carbon and ozone precursor emissions by working with the multilateral Climate and Clean Air Coalition (CCAC), the Arctic Council, the Convention on Long-range Transboundary Air Pollution (LRTAP), and other related international efforts. Based on these findings and enhanced analytical capabilities, EPA will pursue effective steps for reducing these emissions. For instance, EPA is scaling up efforts in low-and middle-income countries to implement best practices for addressing air pollution in ways that achieve climate co-benefits.

Finally, in FY 2023, the Agency will provide on-the-ground resources to assist overburdened and underserved communities as they work to engage on EPA's regulatory efforts and address the impacts of climate change. These community resource coordinators will work with external partners, such as community stakeholder organizations, other federal agencies, state, local and regional governments, private sector entities, academic institutions, and foundations to assist

communities as they begin to plan for climate change and implement actions to increase resilience to climate impacts.

Improving Air Quality

In FY 2023, resources are increased to support efforts to maintain and rebuild programmatic capabilities that focus on protecting clean air. Air quality has improved significantly for communities across the country since passage of the CAA in 1970 (with amendments in 1977 and 1990). Between 1990 and 2020, for example, national average levels have decreased by 25 percent for ozone, 26 percent for coarse particulate matter, 91 percent for sulfur dioxide, and 98 percent for lead.³³ In FY 2023, EPA will continue to prioritize key activities in support of attainment of the NAAQS and implementation of stationary source regulations by state, tribal, and local air agencies. This includes activities in key nonattainment areas along the U.S. -Mexico border as part of U.S. commitments under the *Border 2025* agreement.

NAAQS Review

In FY 2023, EPA will continue its CAA-mandated responsibilities to review the science upon which the NAAQS are based and the standards themselves. Periodic review of the NAAQS requires significant resources and analysis of scientific and technical information to ensure for each NAAQS that public health is protected with an adequate margin of safety, considering at-risk populations.

The President directed EPA to review the 2020 PM NAAQS and the 2020 Ozone NAAQS in accordance with Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. EPA has requested resources in FY 2023 to better incorporate science and input from the reestablished Clean Air Scientific Advisory Committee and to assess information received during the public process for rulemakings to finalize these reviews. In FY 2023, EPA will continue reviewing the NAAQS and has requested resources commensurate to support these reviews. Each review involves a comprehensive reexamination, synthesis, and evaluation of scientific information, the design and conduct of complex air quality and risk and exposure analyses, and the development of a comprehensive policy assessment providing analysis of the scientific basis for alternative policy options.

EPA will continue to administer the NAAQS by reviewing state plans and decisions consistent with statutory obligations; taking federal oversight actions, such as action on SIP and TIP submittals; and developing regulations and policies to ensure continued health and welfare protection during the transition between existing and new standards. EPA will work with air agencies to determine the need for additional federal rulemakings and guidance documents to support state and tribal efforts to implement CAA SIP requirements, in alignment with capacity and priorities. EPA will provide technical and policy assistance to states and tribes developing or revising SIPs/TIPs. To the extent that the above-referenced NAAQS reviews result in a change to the standards, air quality designations related activities for the changed standard(s) would be required. The timing of this work would depend on when the final NAAQS are promulgated.

³³ For additional information on air quality trends, please see Air Quality -National Summary at: <https://www.epa.gov/air-trends/air-quality-national-summary> and at *Our Nation's Air: Status and Trends Through 2020*, found at: <https://gispub.epa.gov/air/trendsreport/2021/>.

NAAQS Nonattainment Areas

EPA, in close collaboration with states and tribes, will work to improve air quality in areas not in attainment with the NAAQS. The Agency will continue to implement changes to improve the efficiency and effectiveness of the SIP process, with a goal of maximizing the timely processing of state-requested SIP actions and reducing the backlog. The Agency also will act on redesignation requests of nonattainment areas to attainment in a timely manner. EPA will maximize use of its comprehensive, online State Planning Electronic Collaboration System (SPeCS) to promote efficiencies for states to submit SIP revisions to EPA, and for EPA to track and process state submittals. Since it launched in January 2018, more than 1,250 SIP submittals (about 90 percent official submissions and 10 percent draft submittals) have come through SPeCS, and more than 400 users have registered from all 50 states and eight air districts. EPA also will further develop SPeCS functionality to provide additional transparency to the public about NAAQS nonattainment areas, state SIP requirements, and related EPA actions.

SIPs for Regional Haze

In FY 2023, EPA will continue reviewing and taking action on regional haze SIP revisions for the second planning period. EPA would continue to work on any outstanding SIP matters and continue providing technical assistance to ensure that states are making reasonable progress towards their visibility improvement goals, consistent with statutory obligations. Under the Regional Haze Rule, states are required to submit updates to their plans to demonstrate how they have and will continue to make progress towards achieving their visibility improvement goals. EPA also may be working on regulatory updates for future planning periods.

Fulfilling Legal Obligations

One of EPA's priorities is to fulfill its statutory and court-ordered obligations. Section 112 of the CAA sets deadlines for EPA to review and update, as necessary, all NESHAP every eight years, accounting for developments in practices, processes, and technologies related to those standards. Section 112 also requires that EPA conduct risk assessments within eight years of promulgation of each MACT-based NESHAP to determine if it appropriately protects public health and to revise it as needed. EPA also will be undertaking three actions related to reviewing and revising the list of hazardous air pollutants, as Section 112 requires. In FY 2023, EPA will undertake these required reviews and associated rulemakings. EPA will enhance risk assessment capabilities to better identify and determine impacts on communities. The Program will prioritize conducting reviews of NESHAP for more than 32 source categories, many of which are subject to court-ordered or court-entered dates or are actions otherwise required by courts, and incorporate environmental justice considerations as part of the decision-making process. From this work, EPA expects to propose or promulgate more than 20 rules in FY 2023. EPA also expects to be undertaking actions related to reviewing and revising the list of hazardous air pollutants, as Section 112 requires.

In addition, under Section 129 of the CAA, in FY 2023 EPA plans to propose one rule regarding incineration and control technologies that supports other rules issued under Section 129.

Technical Assistance to External Government Partners

EPA will assist other federal agencies and state and local governments in implementing the conformity regulations promulgated pursuant to Section 176 of the CAA. These regulations require

federal agencies, taking actions in nonattainment and maintenance areas, to ensure that the emissions caused by their actions will conform to the SIP.

In FY 2023, EPA will provide technical assistance to state, local, and tribal air agencies for both NSR and Title V (operating) permits. This support will occur at appropriate times and as requested, consistent with applicable requirements, before and during the permitting process. EPA expects to implement such support in an efficient manner and consistent with established timeframes for applicable oversight of state, tribal, and local air agencies during the permitting process. EPA's Electronic Permitting System and Title V petition submittal portal will improve EPA interaction with state, local, and tribal air agencies and the general public, and improve data availability and transparency.

EPA will assist state, tribal, and local air agencies with various technical activities. EPA develops and provides a broad suite of analytical tools, such as: source characterization analyses; emission factors and inventories; statistical analyses; source apportionment techniques; quality assurance protocols and audits; improved source testing and monitoring techniques; source-specific dispersion and regional-scale photochemical air quality models; and augmented cost/benefit tools to assess control strategies.³⁴ The Agency will maintain the core function of these tools (e.g., integrated multiple pollutant emissions inventory, air quality modeling platforms, etc.) to provide the technical underpinnings for scientifically sound, efficient and comprehensive air quality management by state, local, and tribal agencies.

In FY 2023, EPA will continue to provide information and assistance to Tribes, states, and communities through documents, websites, webinars, and training sessions on tools to help them build capacity and to provide input into environmental justice assessments that can inform risk reduction strategies for air toxics. The Agency will continue to communicate and effectively collaborate with communities to address a myriad of environmental concerns.

In FY 2023, EPA will continue to support critical response to the growing number of wildfire smoke events through real-time, accessible air quality information, as well as supporting communication documents and websites. The Agency will partner with other federal agencies, such as the Center for Disease Control and the U.S. Forest Service to ensure a consistent and coherent response. EPA expects this work to support tribal, state, local, and community needs to prepare for an increasing number of wildfires and the impacts those fires have on public health across the country.

In FY 2023, state and local air agencies will continue to lead the implementation of the National Air Toxics Trends Sites (NATTS). The NATTS Program is designed to capture the impacts of widespread air toxics and is comprised of long-term monitoring sites throughout the Nation.³⁵ EPA will continue to consult on priority data gaps in order to improve the assessment of population exposure to toxic air pollution.

³⁴ For additional information, please see: <https://www.epa.gov/technical-air-pollution-resources>.

³⁵ For additional information, please see: <https://www.epa.gov/amtic/air-toxics-ambient-monitoring>.

Maintaining Analytical Capabilities and Continuing Data Management

EPA will maintain baseline analytical capabilities required to develop effective regulations including: analyzing the economic impacts and health benefits of regulations and policies; developing and refining source sampling measurement techniques to determine emissions from stationary sources; updating dispersion models for use in source permitting; and conducting air quality modeling that characterizes the atmospheric processes that disperse a pollutant emitted by a source. Resources from the Science and Technology appropriation component of this program support the scientific development of these capabilities.

The President's FY 2023 budget request included \$100 million for a new community air quality monitoring and notification program to support efforts to deliver environmental justice for overburdened and marginalized communities. This community air quality monitoring and notification program will be able to provide real-time data to the public in areas with greatest exposure to harmful levels of pollution, as described in Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad*. In FY 2023, the Agency will continue to work closely with states, tribes, and local air quality agencies to develop the most effective approach to meet community concerns. Funds will support several efforts, including tribal, state, and local grants that supplement the national ambient air quality monitoring network including enhancement of air quality characterization in communities, a competitive grant program promoting air monitoring partnerships with communities, systems to manage and deliver real-time air quality data to the public, and management and implementation activities performed by the Agency.

In FY 2023, EPA will operate and maintain the Air Quality System (AQS), one of the Agency's mission-essential functions, which houses the Nation's air quality data. EPA will provide the core support needed for the AQS Data Mart, which provides access to the scientific community and others to obtain air quality data via the internet. The Agency is exploring a future combined ambient data process to facilitate a streamlined approach to improve the availability of air quality data for our regulatory partners and the public.

The Agency's national real-time ambient air quality data system (AirNow) will maintain baseline operations. Data show the public is increasingly relying on AirNow for air quality information during wildfires. In FY 2023, EPA will continue improving the Fire and Smoke map, including engaging tribal, state, and local agencies for input.

EPA will continue to operate and maintain the Emissions Inventory System (EIS), a system used to quality assure and store current and historical emissions inventory data, and to support development of the National Emissions Inventory (NEI). EPA, states, and others use the NEI to support state and local air agency SIP development, serve as a vital input to air quality modeling, help analyze public health risks from air toxics and develop strategies to manage those risks, as well as support multi-pollutant analysis for air emissions. The Agency is working on user-focused improvements to the EIS, including the addition of online user guides and changing the data submission format to make it easier to report emissions inventory data. EPA will streamline NEI development and reduce the burden for industry to meet emissions data reporting requirements through the Combined Air Emissions Reporting (CAER) e-Enterprise effort. The CAER project, when fully developed and deployed, will streamline multiple emissions reporting processes and is expected to reduce the cost to industry and government for providing and managing environmental data and improve decision-making capacity through more timely availability of the data.

In FY 2023, EPA will initiate a multi-phased process for strengthening air pollution benefits analysis methods in an effort to improve the science it uses to quantify benefits from air quality regulations. EPA will develop a draft benefits *Guidelines* document outlining best practices for incorporating new scientific information into methods for benefits analysis. This will be followed by additional reviews of specific methods and applications. This effort will help ensure transparency and confidence in the process for selecting and applying the latest science in benefits analysis. EPA also will improve tools and approaches to enable more robust analysis of program impacts on communities with environmental justice concerns and vulnerable populations.

As part of a forward-looking air toxics strategy, EPA will address these regulatory and emerging issues and improve access to air toxics data. The Agency will transition to a new approach to share air toxics data faster and more regularly to the public, allowing for increased transparency and the ability to see trends and risks over time. By 2023, EPA will start reporting the most current air toxics data each year in the annual Air Trends Report and an online interactive tool instead of the current three to four-year cycle and providing that data at an increased spatial resolution.

Performance Measure Targets:

(PM NAAQS) Percentage of air quality improvement in counties not meeting current NAAQS.	FY 2022 Target	FY 2023 Target
	7	8
(PM NAAQS2) Percentage of people with low SES living in areas where the air quality meets the PM _{2.5} NAAQS.	FY 2022 Target	FY 2023 Target
	90	93

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$9,932.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$100,000.0) This program change is an increase to develop and implement a community air quality monitoring and notification program to provide real-time data to the public in areas with greatest exposure to harmful levels of pollution. This increase supports work to reduce GHG emissions to tackle the climate crisis and ensure equitable environmental outcomes to advance environmental justice.
- (+\$33,470.0 / +85.4 FTE) This program change is an increase in support for critical priority work for implementation of climate and clean air regulations, including anticipated emissions guidelines for oil and gas and NAAQS review work and related implementation activities, such as development of guidance, review of SIPs and permits, and air monitoring and analyses. This investment includes \$15.11 million in payroll.
- (+\$7,588.0 / + 6.0 FTE) This program change is an increase that will enhance EPA's abilities to forecast where smoke will impact people; identify and communicate when and where smoke events are occurring through monitoring and AirNow's Fire and Smoke Map;

build local capacity to be Smoke Ready so exposure to smoke is reduced; and strengthen internal as well as state, local, and tribal capacity to better coordinate and communicate regarding wildfire smoke and address related regulatory activities. This investment includes \$1.062 million in payroll.

Statutory Authority:

Clean Air Act.

Stratospheric Ozone: Domestic Programs

Program Area: Clean Air and Climate

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Improve Air Quality and Reduce Localized Pollution and Health Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$4,805	\$4,633	\$26,607	\$21,974
Total Budget Authority	\$4,805	\$4,633	\$26,607	\$21,974
Total Workyears	20.6	18.9	39.6	20.7

Program Project Description:

EPA's stratospheric ozone protection program implements provisions of the Clean Air Act (CAA) and the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), which facilitates a global phaseout of ozone-depleting substances (ODS). The Program also implements the American Innovation and Manufacturing (AIM) Act of 2020 to phase down climate-damaging hydrofluorocarbons (HFCs). These actions help protect both the climate system and the stratospheric ozone layer, which shields all life on Earth from harmful solar ultraviolet (UV) radiation.

Scientific evidence demonstrates that ODS used around the world destroy the stratospheric ozone layer,³⁶ which raises the incidence of skin cancer, cataracts, and other illnesses through overexposure to increased levels of UV radiation.³⁷ Based on recent updates to EPA's peer-reviewed Atmospheric and Health Effects Framework model, the Montreal Protocol is expected to prevent approximately 443 million cases of skin cancer, 2.3 million skin cancer deaths, and 63 million cases of cataracts for people in the United States born in the years 1890–2100.³⁸ EPA developed this model to better understand the benefits to public health of stratospheric ozone protection. As a result of global action to phase out ODS, the ozone layer is expected to recover to its pre-1980 levels by mid-century. The AIM Act addresses the climate impact of HFCs by phasing down their production and consumption, maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment, and facilitating the transition to next-generation technologies through sector-based restrictions. A global phasedown of HFCs is expected to prevent up to 0.5 °C of global warming by 2100.

³⁶ World Meteorological Organization (WMO). Scientific Assessment of Ozone Depletion: 2014. Global Ozone Research and Monitoring Project—Report No. 56, Geneva, Switzerland, 2014.

³⁷ Fahey, D.W., and M.I. Hegglin (Coordinating Lead Authors), Twenty questions and answers about the ozone layer: 2014 Update, In Scientific Assessment of Ozone Depletion: 2014, Global Ozone Research and Monitoring Project—Report No. 56, World Meteorological Organization, Geneva, Switzerland, 2014.

Available on the internet at: <https://csl.noaa.gov/assessments/ozone/2014/twentyquestions/>.

³⁸ U.S. Environmental Protection Agency (EPA). Updating the Atmospheric and Health Effects Framework Model: Stratospheric Ozone Protection and Human Health Benefits. EPA: Washington, DC. May 2020. Available on the internet at: https://www.epa.gov/sites/production/files/2020-04/documents/2020_ahsf_report.pdf.

EPA uses a combination of regulatory and partnership programs to implement Title VI of the CAA and the AIM Act and to further the protection of the ozone layer and climate system. Title VI provides for a phaseout of production and consumption of ODS and requires controls on their use, including banning certain emissive uses, requiring labeling to inform consumer choice, and requiring sound servicing practices for the use of refrigerants in air conditioning and refrigeration appliances. Title VI also prohibits venting ODS and their substitutes and requires listing of alternatives that reduce overall risks to human health and the environment, ensuring that businesses and consumers have alternatives that are safer for the ozone layer than the chemicals they replace.

The AIM Act provides for a phasedown of production and consumption of HFCs in the United States by 85 percent, supports industry's transition to next-generation technology, and requires management of HFCs and HFC substitutes. In September 2021, EPA issued a final rule establishing an allowance allocation program to implement the phasedown, as well as robust compliance assurance and enforcement mechanisms to provide a level playing field for producers and importers of HFCs and ensure the program delivers the intended environmental benefits. EPA also worked with U.S. Customs and Border Protection to create an interagency task force to prevent and deter illegal trade in HFCs, and support the enforcement of the phasedown.

As a signatory to the Montreal Protocol, the U.S. is committed to ensuring that our domestic program is at least as stringent as international obligations, and to regulating and enforcing the terms of the Montreal Protocol respective of domestic authority. In 2007, with U.S. leadership, the Parties to the Montreal Protocol agreed to a more aggressive phaseout for ozone-depleting hydrochlorofluorocarbons (HCFCs) equaling a 47 percent reduction in overall emissions during the period 2010 – 2040. The adjustment in 2007 also called on Parties to the Montreal Protocol to promote the selection of alternatives to HCFCs that minimize environmental impacts, in particular impacts on climate.³⁹ The CAA provides the necessary authority to ensure EPA can collect and validate data, and where appropriate, report data on production and consumption of ODS on behalf of the United States.⁴⁰ The Parties to the Montreal Protocol also agreed to the Kigali Amendment in 2016,⁴¹ which seeks to globally phase down the production and consumption of HFCs consistent with the AIM Act. If the United States ratifies the Kigali Amendment, EPA will use the authority in the AIM Act to collect and validate data, and where appropriate, report data on production and consumption of HFCs on behalf of the United States.

Partnership programs are calibrated to increase benefits by focusing on specific areas where the Agency has identified significant opportunities. The Responsible Appliance Disposal (RAD) Program⁴² is a partnership that protects the ozone layer and reduces emissions of greenhouse gases through the recovery of ODS and HFCs from old refrigerators, freezers, window air conditioners, and dehumidifiers prior to disposal. RAD has more than 50 partners, including manufacturers, retailers, utilities, and state governments. The GreenChill Partnership⁴³ helps

³⁹ *Montreal Protocol Decision XIX/6: Adjustments to the Montreal Protocol with regard to Annex C, Group I, substances (hydrochlorofluorocarbons)*.

⁴⁰ In the event that the United States ratifies the Kigali Amendment, EPA has authority under the AIM Act to collect the data needed for reporting on HFCs under the Montreal Protocol.

⁴¹ Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Kigali 15 October 2016, found at: <https://treaties.un.org/doc/Publication/CN/2016/CN.872.2016-Eng.pdf>.

⁴² For more information, see: <https://www.epa.gov/rad>

⁴³ For more information, see: <http://www.epa.gov/greenchill>.

supermarkets transition to environmentally friendlier refrigerants, reduce harmful refrigerant emissions, and move to advanced refrigeration technologies, strategies, and practices that lower the industry's impact on the ozone layer and climate. The Program includes stores in all 50 states and represents over 30 percent of the United States' supermarkets. GreenChill partners are reducing refrigerant leak rates to half the estimated national average and developing annual plans for further improvements.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.1, Improve Air Quality and Reduce Localized Pollution and Health Impacts in the *FY 2022 - 2026 EPA Strategic Plan*. Work in this program also supports progress toward the Agency Priority Goal to reduce the production and consumption of HFCs.

In carrying out the requirements of the CAA and the Montreal Protocol in FY 2023, EPA will continue to meet its ODS consumption caps and work toward the required gradual reduction in production and consumption of ODS. To meet the FY 2026 long-term performance goal for lowering consumption of HCFCs to 76.2 tons per year of ozone-depletion potential,⁴⁴ EPA will: issue allocations for HCFC production and import in accordance with the requirements established under CAA Sections 605 and 606; review petitions to import used ODS under sections 604 and 605; manage information that industry identifies as confidential under CAA Section 603; and implement regulations concerning the production, import, and export of ODS and maintenance of the tracking system used to collect the information. EPA intends to finalize a rule on process agent uses of ODS and propose a rule on feedstock uses of ODS in FY 2023. EPA also will prepare and submit the annual report under Article 7 of the Montreal Protocol on U.S. consumption and production of ODS consistent with the treaty.⁴⁵

EPA will continue to implement the CAA Section 608 refrigerant management requirements related to the use and emission of ODS, HFCs and other substitutes.

CAA Section 612 requires continuous review of alternatives for ODS through EPA's Significant New Alternatives Policy (SNAP) program⁴⁶ to both find those that pose less overall risk to human health and the environment and ensure a smooth transition to safer alternatives. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for approximately 50 end-uses across eight industrial sectors. In *Mexichem Fluor v. EPA*, the DC Circuit Court partially vacated a 2015 rule "to the extent it requires manufacturers to replace HFCs with a substitute substance" and remanded the rule to EPA for further proceedings. A second court decision applies similarly to a 2016 rule. EPA expects to propose a notice-and-comment rulemaking in FY 2022 that would address the court decisions and intends to finalize the rule in FY 2023. In addition, in FY 2023, EPA expects to list through notice as well as propose notice-and-comment rulemaking that would expand the list of acceptable lower-GWP alternatives, particularly for end-uses where

⁴⁴ The HCFC consumption cap of 15,240 ODP-weighted metric tons for the U.S. was effective January 1, 1996, and became the U.S. consumption baseline for HCFCs.

⁴⁵ The Article 7 report prepared by EPA on behalf of the United States contains chemical-specific production, import and export data that is not available publicly. To protect potential confidential information the report is not available on the internet; however, the data included in the report is aggregated and available at: <https://ozone.unep.org/countries/profile/usa>.

⁴⁶ For more information, please see: <https://www.epa.gov/snap>.

there is an urgent need for more options, which also will support implementation of the AIM Act. EPA also will continue to work towards ensuring the uptake of safer alternatives and technologies, while supporting innovation, and ensuring adoption of alternatives through support for changes to industry codes and standards.

With the decline in allowable ODS production, a significant stock of equipment that continues to use ODS will need access to recovered and recycled/reclaimed ODS to allow for proper servicing. EPA will continue to review available market and reported data to monitor availability of recycled and reclaimed ODS where production and import of new material is phased out to support this need. In addition, EPA will continue to implement a petition process to allow for the import of used ODS (primarily halon) for fire suppression purposes. EPA also will implement other provisions of the Montreal Protocol, including exemption programs to allow for a continued smooth phaseout of ODS, particularly for laboratory and analytical uses, feedstock, process agents, and HCFCs used consistent with the servicing tail.

In FY 2023, the Agency also will continue to implement the AIM Act HFC phasedown through an allowance allocation and trading program established in FY 2021 and this work will support implementation of EPA's Agency Priority Goal. To further this goal, the Agency has requested additional resources to restore staff capacity and develop a new grant program aimed at assisting small businesses with the purchase of specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance as authorized in the AIM Act.

The Agency will continue to implement an HFC reporting system and develop additional tracking and review tools to better ensure compliance with the phasedown regulations, and work with other agencies to prevent illegal imports. EPA also will finalize a regulation proposed in FY 2022 to issue allowances for HFC production and consumption for calendar years 2024 and future years.

Under subsection (h) of the AIM Act, in FY 2023 EPA will propose a notice and comment rulemaking to control certain practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant.

Under subsection (i) of the AIM Act, the Agency will finalize regulations proposed in FY 2022 to restrict fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used, promoting a transition to next-generation technologies. Other activities under subsection (i) include granting and/or denying petitions for sector-based restrictions on HFCs.

The AIM Act also authorizes EPA to establish a grant program for small businesses for purchase of recycling, recovery, or reclamation equipment for HFC substitutes, including for servicing motor vehicle air conditioners. In FY 2023, additional funding is included for the development of a new grant program to assist small businesses with the purchase of specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance as authorized in the AIM Act.

In FY 2023, EPA will continue to provide technical expertise for the Montreal Protocol's Technology and Economic Assessment Panel and its Technical Options Committees, advancing reductions of ODS and HFC consumption and ensuring U.S. interests are represented.

In FY 2023, EPA will continue to support a level playing field for companies operating legally under the CAA and AIM Act regulations and those that have transitioned to alternatives for ODS and HFCs. EPA exchanges data with U.S. Customs and Border Protection and Homeland Security Investigations on ODS and HFC importers and exporters to determine admissibility and target illegal shipments entering the United States, as well as reviews and approves imports flagged in the Automated Commercial Environment. This is particularly important in light of recent atmospheric measurements showing unexpected increased emissions of CFC-11, an ODS phased out of production globally,^{47,48} and given the new AIM Act regulations. EPA also will work with partner agencies, including through the Interagency Task Force on Illegal HFC Trade, to detect, deter, and disrupt any attempt to illegally import or produce HFCs in the United States. In addition, EPA will work to support federal sector management and transition from HFCs through continued cooperation with organizations such as Department of Defense and the General Services Administration.

Performance Measure Targets:

(PM HFC) Remaining U.S. consumption of hydrofluorocarbons (HFCs).	FY 2022 Target	FY 2023 Target
	273.5	273.5

(PM HCFC) Remaining U.S. consumption of hydrochlorofluorocarbons (HCFCs), chemicals that deplete the Earth's protective ozone layer, in ozone depletion potential (ODP)-weighted metric tons.	FY 2022 Target	FY 2023 Target
	76.2	76.2

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$572.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$16,402.0 / +20.7 FTE) This program change is an increase to implement provisions in the American Innovation and Manufacturing Act to phase down the use of HFCs, to facilitate U.S. entry to the Kigali amendment to the Montreal Protocol, and to restore staff capacity around efforts to tackle the climate crisis. This investment includes \$3.625 million in payroll.

⁴⁷ See, Montzka *et al.* An unexpected and persistent increase in global emissions of ozone-depleting CFC-11, *Nature*, volume 557, pages 413–417, 2018. Available on the internet at: <https://www.nature.com/articles/s41586-018-0106-2>.

⁴⁸ See, Rigby *et al.* Increase in CFC-11 emissions from eastern China based on atmospheric observations, *Nature*, volume 569, pages 546–550, 2019. Available on the internet at: <https://www.nature.com/articles/s41586-019-1193-4>.

- (+\$5,000.0) This program change is an increase for the development of a new grant program to assist small businesses with the purchase of specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance as authorized in the AIM Act.

Statutory Authority:

Title VI of the Clean Air Act and the American Innovation and Manufacturing Act.

Stratospheric Ozone: Multilateral Fund

Program Area: Clean Air and Climate

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Improve Air Quality and Reduce Localized Pollution and Health Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$8,326	\$8,711	\$18,000	\$9,289
Total Budget Authority	\$8,326	\$8,711	\$18,000	\$9,289

Program Project Description:

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) is the international treaty designed to protect the stratospheric ozone layer by facilitating a global phaseout of ozone-depleting substances (ODS) and since 2016, phasing down climate-damaging hydrofluorocarbons (HFCs) under its Kigali Amendment. EPA is phasing down ODS under Title VI of the Clean Air Act and HFCs under the American Innovation and Manufacturing (AIM) Act of 2020. As a result of global action to phase out ODS, the ozone layer is expected to recover to its pre-1980 levels by mid-century. A global phasedown of HFCs is expected to prevent up to 0.5 °C of global warming by 2100.

The *Multilateral Fund for the Implementation of the Montreal Protocol* (Multilateral Fund) was created by the Parties to the Montreal Protocol to provide funds that enable developing countries to comply with their Montreal Protocol obligations following agreed upon schedules. The United States and other developed countries contribute to the Multilateral Fund. The United States holds a permanent seat on the Multilateral Fund's governing body (the Executive Committee) and can help focus efforts on cost-effective assistance and encourage climate-friendly transitions. The U.S. contribution to the Multilateral Fund is split between EPA and the Department of State.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.1, Improve Air Quality and Reduce Localized Pollution and Health Impacts in the *FY 2022 - 2026 EPA Strategic Plan*.

EPA's contributions to the Multilateral Fund in FY 2023 will primarily continue to support cost-effective projects designed to build capacity and eliminate ODS production and consumption in over 140 developing countries and provide early support for the global phasedown of HFCs. Through 2020, the Multilateral Fund supported over 7,833 activities in 146 countries that, when fully implemented, will phase out more than 490,000 ozone-depletion potential metric tons. Additional projects will be submitted, considered, and approved in accordance with Multilateral Fund guidelines.

In FY 2023, the United States will continue to promote developing country transitions to climate-friendly alternatives and reduce HFC-23 byproduct emissions. The United States also will support preparatory activities such as establishing HFC baselines, phasedown starting points, and other activities to ensure that the global HFC phasedown will leverage the expertise and experience gained during the 30-year history with phasing out ODS. Taken together, this work will support developing country compliance with Protocol obligations.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$9,289.0) This program change is an increase to help fund additional activities associated with the adoption of the Kigali Amendment and developing country phase down of HFCs while continuing to support ODS phaseout activities.

Statutory Authority:

Title VI of the Clean Air Act.

Compliance

Compliance Monitoring

Program Area: Compliance

Goal: Enforce Environmental Laws and Ensure Compliance

Objective(s): Detect Violations and Promote Compliance

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$97,583</i>	<i>\$102,500</i>	<i>\$144,770</i>	<i>\$42,270</i>
Inland Oil Spill Programs	\$132	\$139	\$2,146	\$2,007
Hazardous Substance Superfund	\$1,778	\$1,000	\$1,015	\$15
Total Budget Authority	\$99,493	\$103,639	\$147,931	\$44,292
Total Workyears	439.1	453.9	463.4	9.5

Program Project Description:

The Compliance Monitoring Program is a key component of EPA's Enforcement and Compliance Assurance Program that supports both compliance with federal environmental laws as well as efforts to identify noncompliance. Compliance monitoring activities, such as inspections, investigations, and review of self-reported compliance monitoring information, or other forms of offsite compliance monitoring, are conducted by EPA and our coregulators (states, federally recognized tribes, and territories) to determine if regulated entities are complying with environmental statutes as well as applicable regulations and permit conditions. Compliance information gathered from these activities is reported into EPA's data systems and used for analyses and targeting, and to make information available to co-regulators and the public. These activities and data also can be utilized to identify programs and sectors with high noncompliance to be the subject of national compliance and enforcement initiatives, and to identify conditions that may present an imminent and substantial endangerment to human health and the environment and thereby warrant immediate attention. Given the large number of regulated entities, effective targeting of compliance monitoring and analysis of compliance data play a critical role in achieving the goals EPA has set forth for protecting health and the environment.

Tools in the Compliance Monitoring Program include:

- **Compliance Program Data Management and Electronic Reporting:** EPA has a national enforcement and compliance data system, the Integrated Compliance Information System (ICIS), which supports both the compliance monitoring and civil enforcement programs. As EPA's largest mission-focused data system, ICIS is a critical infrastructure tool used by the Agency, state, tribal, local and territorial governments, and the regulated community, to track compliance with and enforcement of all EPA statutes, which facilitates greater compliance and thus protection of human health and the environment. States are a major user of this resource. For instance, 21 state governments depend on ICIS to directly manage their clean water permitting and compliance activities. EPA utilizes ICIS enforcement and compliance data and other information technology tools to: (1) identify potential violations of the federal

environmental laws; (2) facilitate efficient enforcement; and (3) promote compliance with these requirements.

EPA also makes ICIS data available to the public via the internet-accessible Enforcement and Compliance History Online (ECHO) system. Using ICIS and ECHO to electronically track its civil enforcement work allows EPA to better ensure that its enforcement resources are used to facilitate transparency and address the most significant noncompliance problems, including noncompliance affecting overburdened, underserved, or vulnerable communities and noncompliance that leads to climate impacts. EPA collaborates with state, local, federal, tribal, and industry partners, through the E-Enterprise initiative, to leverage technologies such as in promoting electronic reporting and permitting. EPA and states implement the National Pollution Discharge Elimination System (NPDES) Electronic Reporting Rule through ICIS, one key tool for improving the availability of clean water compliance data to EPA, states, and the public.⁴⁹

- **Support for the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Program:** The Agency will continue to implement Phases 1 and 2 of the NPDES Electronic Reporting Rule which covers electronic permitting and compliance monitoring reporting and data sharing requirements for EPA and states. EPA will continue to work with states to ensure EPA has complete and high-quality permit, compliance, and enforcement data, and will evaluate and prioritize the development of additional electronic reporting tools that support states. EPA will continue to provide EPA and states with tools and support for tracking, interpreting, and reducing their NPDES noncompliance rate and will provide support to states in strengthening their NPDES compliance programs. In FY 2021, EPA reduced the percentage of permittees in significant noncompliance with their NPDES permits from a FY 2018 baseline of 20.3 percent to 12.6 percent.
- **Compliance Monitoring Inspector Credential Policies and Training for EPA, State, Tribal and Local Governments:** To ensure the quality of compliance monitoring activities, EPA develops national policies, updates inspection manuals, establishes training requirements for inspectors, and issues inspector credentials. EPA delivers critical in-person and online training courses to new and experienced federal, state, tribal and local inspectors to ensure the integrity of the national Compliance Monitoring Program, as well as other training for federal and state personnel on critical and emerging compliance issues. EPA hosts several in-person inspector training programs, such as the annual Clean Water Act NPDES Technical Inspector Workshop, the Public Water System Supervision (PWSS) Inspector Training Program, and the Federal Insecticide, Fungicide, and Rodenticide Act Pesticide Inspector Residential Training Program.
- **Compliance Assistance:** Compliance assistance is a valuable tool to assist regulated facilities in understanding their compliance obligations and achieving and maintaining compliance. EPA provides compliance assistance by working with third-party organizations and federal agencies to support 17 web-based, sector-specific compliance assistance centers and other web-based assistance resources. In addition, the Enforcement and Compliance Assurance Program develops webinars, Compliance Advisories, and other assistance materials to help EPA, and state regulators and the regulated community understand compliance rules and

⁴⁹ For more information, please see: <https://www.epa.gov/compliance/npdes-ereporting>.

obligations. EPA also provides facility specific technical assistance to regulated entities such as the CWA and Safe Drinking Water Act (SDWA) regulated entities under the Compliance Advisor Program discussed in greater detail below.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 3/Objective 3.2, Detect Violations and Promote Compliance in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an additional \$42.3 million and 9.5 FTE to modernize our national enforcement and compliance data system and to expand compliance monitoring efforts to address environmental justice issues (including the Compliance Advisor Program and inspection program), Smart Tools for inspectors, implementation of the Evidence Act, per- and poly-fluoroalkyl substances (PFAS), and climate change concerns including reduction in the use of hydrofluorocarbons (HFCs). EPA will continue to implement its comprehensive action plan for integrating environmental justice (EJ) and climate change considerations throughout all aspects of the Program, including the addition of a performance measure tracking the percentage of inspections affecting communities with potential EJ concerns. This effort answers the President's call to "strengthen enforcement of environmental violations with disproportionate impact on overburdened or underserved communities through the Office of Enforcement and Compliance Assurance" (EO 14008, sec. 222(b)(i)), and to "combat the climate crisis with bold, progressive action" (EO 14008, sec. 201).⁵⁰ This work includes, but is not limited to, multi-state/multi-regional matters, issues of national significance, and emergency situations. In addition, EPA also will provide some targeted oversight and support to state, local, and tribal programs. To accomplish this objective, the Agency will prioritize work with states to develop methods that successfully leverage advances in both monitoring and information technology. The Agency also will maintain accessibility to ICIS for EPA, states, and tribes.

EPA will continue the data system modernization effort to better support states, tribes, and local governments and the public's need for information with modernized technology and implement EPA's enterprise-wide Digital Strategy with shared IT services. Modernization will facilitate EPA's efforts to better target noncompliance that impacts overburdened, underserved, or vulnerable communities and will increase the availability of information about environmental conditions in those communities and elsewhere.

In FY 2023, EPA will continue its efforts to modernize ICIS and support better integration with the public ECHO database. As a result of this data integration, EPA will be in a better position to focus compliance monitoring resources on areas of highest human and environmental risk, increase transparency to the public and improve data quality. EPA also will continue to improve ICIS and ECHO which will facilitate better access of compliance data and community information (e.g., from EPA's EJ screening tool) to EPA and states and to the public.

⁵⁰ For additional information on the Executive Order on *Tackling the Climate Crisis at Home and Abroad*, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

In FY 2023, EPA also will continue to expand software solutions for field inspectors to improve the effectiveness and efficiency of compliance inspections conducted by EPA and authorized states. Beginning in FY 2020, EPA has rolled out its Smart Tools for inspectors in the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program and the NPDES Program. Smart Tools software makes the process of documenting field inspections and preparing inspection reports more efficient. This tool allows EPA to use its compliance monitoring resources more efficiently, including monitoring for noncompliance, which affect overburdened, underserved, or vulnerable communities, or which may have climate impacts. It also allows EPA to make inspection reports more readily and timely available to the regulated entity and to the public in affected communities. Work on design and development of software for additional inspection programs will continue through FY 2022 and beyond (e.g., Underground Storage Tanks, Clean Air Act, Toxic Substances Control Act, Federal Insecticide, Fungicide, and Rodenticide Act).

Additional funding will further allow EPA to increase its implementation of the Evidence Act⁵¹ through the “Drinking Water Systems Out of Compliance” priority area in EPA’s Learning Agenda. Safe drinking water is critical to the health of communities and each year, thousands of community water systems violate one or more health-based drinking water standards. Drinking water noncompliance is greatest in small, under-resourced communities and may be higher than EPA data suggests due to failures to monitor and report. In FY 2023, EPA will continue to collect new information and conduct studies under this learning priority area to develop statistically valid data to identify effective policy instruments. Additional resources will allow for the involvement of more state partners in assessing drinking water data to determine how accurately the data measures national compliance and substantiates EPA policy decisions. EPA will evaluate other questions on noncompliance root causes and corresponding factors and the efficacy of technical assistance, enforcement, and state oversight. EPA also will conduct an analysis to identify metrics of system technical, managerial, and financial capacity for early identification of at-risk drinking water systems. The analysis will test existing and new predictive analytic tools designed to identify at-risk systems. EPA will continue to reach out to and work with states, tribes, and academic experts to implement OECA’s compliance learning agenda. The compliance learning agenda will improve the effectiveness of enforcement and compliance programs, approaches and tools by: prioritizing the most pressing programmatic questions; planning evidence-based studies to address these questions; and identifying effective and innovative approaches for improving compliance.

In FY 2023, EPA will continue the Agency’s Compliance Advisor Program (formerly known as OECA’s “Circuit Rider Program”), which reduces noncompliance at small public water systems (PWSs) and small wastewater treatment facilities (WWTFs) by providing hands-on technical assistance. Many small drinking water and wastewater systems are under-resourced or are in overburdened or underserved communities and are unable to achieve and maintain compliance due to lack of technical, managerial, and financial capacity. These communities are impacted by factors such as aging infrastructure, workforce shortages, and declining rate bases. These challenges are the root cause of most violations of the SDWA and CWA. Part trainer and part consultant, Compliance Advisors troubleshoot issues, develop plans to return systems to compliance, and increase the technical capacity of operators. The Compliance Advisors may revisit systems as needed, promoting sustainable compliance.

⁵¹ *Foundations for Evidence-Based Policymaking Act* (Public Law 115–435).

To date, Compliance Advisors have provided technical assistance to approximately 165 small PWSs and 68 WWTFs in under-resourced communities nationwide, across all Regions – covering 21 states, Puerto Rico, and seven tribes. An increase of approximately \$2 million plus 1 FTE will allow Compliance Advisors to provide much needed assistance for up to 100 new systems. There are hundreds more small systems and facilities that need technical support to help them achieve and stay in compliance and provide clean and safe water to the communities they serve. In general, the systems supported by the Compliance Advisor Program are small (serving populations of less than 10,000). Over 90 percent are in overburdened, underserved, or vulnerable communities. As of early 2022, Compliance Advisors have delivered approximately 100 Recommendations Reports to small drinking water and wastewater systems, and have provided more than 300 standard operating procedures, checklists, and other tools to help these small systems return to sustained compliance. Tribes, who are often small or isolated, also will be offered additional multimedia assistance with respect to underground injection wells, underground storage tanks, and other programs as appropriate. There is significant demand for assistance that is targeted where existing technical support efforts cannot meet the needs of the community. The Compliance Advisor Program supplements other technical assistance efforts across the Agency. As funds are available, the Regions are requested to work with their states to identify and nominate systems to receive Compliance Advisor help returning to and sustaining compliance.

In FY 2023, EPA will continue to utilize its Mission Contract to support inspections in all Regions and to fund compliance monitoring efforts that support development of hydrofluorocarbon (HFC) cases. Compliance monitoring funds will advance protection of communities by increasing inspections and compliance assistance to ensure nearby facilities are adhering to regulations designed to protect vulnerable populations, as well as creating and expanding programs to further environmental protections and increase monitoring capability.

The investment in resources will support enforcement and compliance inspections adhering to Clean Air Act requirements for motor vehicles, engines and fuels, stationary sources, chemical accident prevention, wood heaters, and stratospheric ozone; Clean Water Act requirements for preventing and addressing oil spills and spills of sewage or other hazardous substances, wetlands protection, and biosolids use and disposal; Toxic Substance Control Act requirements for new and existing chemicals, lead based paint and polychlorinated biphenyls (PCBs); Federal Insecticide, Fungicide, and Rodenticide Act requirements for pesticide registration; and Emergency Planning and Community Right to Know Act requirements for emergency planning; Toxics Release Inventory reporting; American Innovation and Manufacturing (AIM) Act requirements for HFC reductions; and for Resource Conservation and Recovery Act requirements for hazardous and non-hazardous solid waste.

In FY 2023, EPA will continue the Agency's efforts to develop actions to address PFAS. PFAS is an urgent public health and environmental threat facing communities across the United States, with significant equity and EJ implications. While these compounds have for decades played an important role to many areas of society, the Nation is now realizing the potential adverse effects of their widespread use. Today, PFAS have been found in surface water, groundwater, soil, and air across the country – from remote rural areas to densely-populated urban centers. Adverse health effects from PFAS contamination may most strongly threaten vulnerable populations (including pregnant women, children, and the elderly).

This proposed increase of approximately \$3 million in funding will support EPA’s PFAS Strategic Roadmap. EPA will utilize these resources to investigate and identify releases of PFAS to the air, land, and water by actively investigating under RCRA, Toxic Substances Control Act (TSCA), CWA, SDWA, and CAA at the yet-unknown number of processing facilities and waste disposal facilities where PFAS are suspected of contaminating various environmental media. Funds will support case development and issuance of information requests, including the potential identification of imminent and substantial endangerment issues under CWA, SDWA, or RCRA. These resources also will assist dispute resolution and case development against federal agencies responsible for PFAS contamination. Funds will be used to continue operation and development of the PFAS Analytic Tools, a data integration platform currently used by EPA and states to analyze national PFAS data sets. The funding will provide enhancements including making the information more available to the public, including communities with EJ concerns.

Performance Measure Targets:

(PM 409) Number of federal on-site compliance monitoring inspections and evaluations and off-site compliance monitoring activities.	FY 2022 Target	FY 2023 Target
	10,000	10,000
(PM 444) Percentage of EPA inspection reports sent to the facility within 70 days of inspection.	FY 2022 Target	FY 2023 Target
	75	75
(PM 450) Percentage of EPA inspections at facilities affecting communities with potential environmental justice concerns.	FY 2022 Target	FY 2023 Target
	45	50

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$3,447.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$22,854.0 / +5.0 FTE) This program increase will allow EPA to accelerate the modernization of the Integrated Compliance Information System and enhance its integration with the Enforcement and Compliance History Online family of internet-based services. The increased resources will fund adjustments to ICIS and ECHO that will facilitate better access of compliance data and community information, for instance to EPA’s EJSCREEN tool and to other Federal systems like the Climate and Economic Justice Screening Tool) to EPA and states and to the public. This modernization will enhance EPA’s efforts to address compliance concerns in overburdened, underserved, or vulnerable communities. This investment includes \$854.0 thousand in payroll.
- (+\$6,391.0 / +2.0 FTE) This program increase will allow the Compliance Advisor Program to provide critical technical assistance to an additional 80-100 systems to achieve and maintain compliance. Funding also will be used to support inspections and case development in the Regions. Funds may be used to support underserved communities

identified by the Regions and states as having concerns because of lead Action Level exceedances. This investment includes \$342.0 thousand in payroll.

- (+\$1,071.0 / +2.0 FTE) This program increase will allow EPA to evaluate priority questions in the Drinking Water Learning Agenda, developed under the Evidence Act, and thereby test the efficacy of policies to address drinking water noncompliance. The increase also will allow EPA to conduct studies with broader participation (such as involving the states) to test the effectiveness of inspection and enforcement approaches to improve compliance in the drinking water program. This investment includes \$342.0 thousand in payroll.
- (+\$116.0 / +0.5 FTE) This program increase will allow EPA to fund required collaborative enforcement and compliance assurance efforts (assistance, targeting, monitoring, strategic planning, and enforcement) under development pursuant to the AIM Act to facilitate the next phasedown stages, for HFCs. This investment includes \$85.0 thousand in payroll.
- (+\$3,415.0) This program increase will build capacity for the inspection program, case development and provide increased training to staff to conduct inspections and perform other compliance monitoring activities at Headquarters and the Regions. This funding will enhance EPA's compliance monitoring programmatic capabilities to enhance efforts to address pollution in overburdened and vulnerable communities.
- (+\$2,976.0) This program increase will allow EPA to investigate and identify releases of PFAS to the air, land, and water by actively investigating under RCRA, TSCA, CWA, SDWA, and CAA at the yet-unknown number of processing facilities and waste disposal facilities where PFAS are suspected of contaminating various environmental media. In addition, these funds will allow EPA to continue operation and development of the PFAS Analytic Tools, a data integration platform currently used by EPA and states to analyze national PFAS data sets.
- (+\$2,000.0) This program increase will allow EPA to advance work on the Smart Tools for Field Inspectors to increase the efficiency of inspections and help develop the tool for some of the smaller programs that have more of a direct impact for communities with EJ concerns such as the TSCA lead-based paint programs.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Act to Prevent Pollution from Ships (MARPOL Annex VI); American Innovation and Manufacturing Act; Clean Air Act; Clean Water Act; Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act; Marine Protection, Research, and Sanctuaries Act; Oil Pollution Act; Resource Conservation and Recovery Act; Rivers and Harbors Act; Safe Drinking Water Act; Toxic Substances Control Act.

Enforcement

Civil Enforcement

Program Area: Enforcement

Goal: Enforce Environmental Laws and Ensure Compliance

Objective(s): Hold Environmental Violators and Responsible Parties Accountable

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$164,888</i>	<i>\$168,341</i>	<i>\$210,011</i>	<i>\$41,670</i>
Leaking Underground Storage Tanks	\$625	\$620	\$653	\$33
Inland Oil Spill Programs	\$2,532	\$2,413	\$2,538	\$125
Total Budget Authority	\$168,045	\$171,374	\$213,202	\$41,828
Total Workyears	908.0	916.2	1,004.2	88.0

Program Project Description:

The overall goal of EPA's Civil Enforcement Program is to protect human health and the environment by ensuring compliance with the Nation's environmental laws and regulations. The Civil Enforcement Program works in partnership with its state, local, tribal, and territorial regulatory partners to encourage compliance, compel regulated entities to correct and/or mitigate violations, and to assess appropriate penalties for violations, including removing any economic benefit that a violator gained from noncompliance.

The Civil Enforcement Program works closely with the U.S. Department of Justice, state and local governments, tribal governments, territories, and other federal agencies to ensure consistent and fair enforcement of all major environmental statutes and numerous regulations implementing each of those statutes. Millions of regulated public, federal, and private entities are subject to one or more of these statutory requirements. The Civil Enforcement Program develops, litigates, and settles administrative and civil judicial cases against violators of environmental laws. In FY 2021, because of EPA civil enforcement actions, approximately 285 million pounds of air, water, and toxic pollutants were reduced, treated, or eliminated, and approximately 7.6 billion pounds of hazardous and non-hazardous waste were treated, minimized, or properly disposed.⁵²

EPA is responsible for direct implementation of programs that are not delegable or where a state or tribe has not sought or obtained the authority to implement a program (or program component). Examples of programs that are not delegable include the Clean Air Act (CAA) mobile source and Ozone Depleting Substances programs; pesticide labeling and registration under the Federal Insecticide, Fungicide, and Rodenticide Act; the new and existing chemicals program under the Toxic Substances Control Act (TSCA); and enforcement in Indian Country (except where the program has been delegated to the tribe). Many statutes have programs or regulations that states have not obtained authority to implement, including the American Innovation and Manufacturing

⁵² For additional information on EPA's FY 2021 enforcement and compliance assurance program results, please see: <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2021>.

Act, as well as portions of the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), TSCA (lead-based paint program), and the CAA (chemical accident prevention).

EPA works with authorized states and tribes to ensure a level playing field and assists states and tribes in their implementation of delegated/authorized programs when needed, such as in cases where the Agency maintains a unique expertise or capability. The Agency also carries out its statutory oversight responsibilities to ensure states and tribes are meeting national compliance monitoring standards and taking timely and appropriate actions to return facilities to compliance. Our work to protect communities with environmental justice (EJ) concerns is a shared goal and responsibility of EPA and our partner agencies.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 3/Objective 3.1, Hold Environmental Violators and Responsible Parties Accountable in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an investment of 88 FTE and approximately \$41.7 million to expand civil enforcement efforts to address EJ issues (including protection of fenceline communities); climate change concerns (including a reduction in the use of hydrofluorocarbons (HFCs); and methane emissions from oil and gas facilities and landfills); per- and poly-fluoroalkyl substances (PFAS); and coal combustion wastes. In addition, EPA will continue to focus efforts toward areas where EPA's enforcement actions can have the most substantial impacts on human health and the environment. EPA will continue to focus its resources on the six current national compliance initiatives (seeking to improve air quality, provide for clean and safe water, and ensure chemical safety);⁵³ the enforcement of rules to prevent exposure to lead; and attention to emerging contaminants, like PFAS.

In FY 2023, EPA proposes to increase protection of fenceline communities at risk from cumulative impacts of large chemical manufacturing facilities, petrochemical operations, and refineries. Through coordinated assessment of noncompliance in multiple statutory areas, EPA's Civil Enforcement Program will plan inspections, case development, and enforcement actions to integrate RCRA, CWA, SDWA, CAA (including 112r), TSCA and EPCRA to ensure comprehensive compliance with environmental regulations, thereby reducing risk to human health and the environment by decreasing the likelihood of excess emissions, releases, and discharges.

In FY 2023, EPA will continue to integrate EJ and climate (including HFCs) considerations throughout all aspects of EPA's Civil Enforcement Program (*e.g.*, private parties, public and federal facilities) in headquarters and across EPA's 10 regional offices. This work will answer the President's call to "strengthen enforcement of environmental violations with disproportionate impact on underserved communities through the Office of Enforcement and Compliance Assurance" (EO 14008, sec. 222(b)(i)), and to "combat the climate crisis with bold, progressive

⁵³ For additional information, please see: <https://www.epa.gov/enforcement/national-compliance-initiatives>.

action” (EO 14008, sec. 201).⁵⁴ EPA will focus on strengthening enforcement and resolving environmental noncompliance through remedies with tangible benefits for the impacted community by preventing further pollution due to noncompliance; mitigating past impacts from pollution; securing penalties to recapture economic benefit of noncompliance and deter future violations; seeking early and innovative relief (e.g., fenceline monitoring and transparency tools); and, incorporating Supplemental Environmental Projects (SEPs) in settlements, where appropriate and to the extent permitted by law and policy.

In FY 2023, EPA will continue to incorporate EJ and climate change considerations into case development while pursuing enforcement and compliance assurance work, including by increasing climate and EJ-focused inspections and community outreach, considering climate and EJ factors in case-selection (e.g., to emphasize areas where greenhouse gas emission can be reduced while providing benefits in underserved communities, such as reducing air emissions from landfills), and expanding inclusion of mitigation and resilience remedies in case resolutions. In addition, EPA will ensure that the increasing number of rules addressing climate change and affecting communities with EJ concerns, as well as permit-related provisions, are enforceable and implementable. EPA also will expand databases to track climate and EJ enforcement activities, enhance or create networks of staff focused on advancing the Administration’s climate and EJ goals, and develop and provide comprehensive and ongoing training on climate and EJ issues to equip staff for future challenges. A particular area of EPA’s climate change effort will be the work of the Interagency HFC Task Force, which was established to ensure compliance with the American Innovation and Manufacturing (AIM) Act. The task force will identify, intercept, and interdict illegal HFC imports (potent greenhouse gases), share data to support allowances, train customs officers and enforcement personnel, and address common HFC import experiences with other countries. EPA will vigorously enforce its regulations to prevent and deter illegal importation of HFCs. Additionally, EPA will continue its strong emphasis on identifying and resolving Clean Air Act noncompliance in the oil and gas sector and requiring compliance with the Renewable Fuel Standard regulations.

In FY 2023, EPA will utilize these resources to investigate and identify releases of PFAS to the air, land, and water by actively investigating under RCRA, TSCA, CWA, SDWA, and CAA at the yet-unknown number of processing facilities and waste disposal facilities where PFAS are suspected of contaminating various environmental media. PFAS is an urgent public health and environmental threat facing communities across the United States, with significant equity and EJ implications. EPA will continue to investigate releases, address imminent and substantial endangerment situations, and prevent exposure to PFAS, under multiple environmental statutes.

In FY 2023, new statutory and regulatory requirements will mean an increased need to evaluate and address noncompliance with these rules. In addition, the Agency will continue to use some of its funding to cover enforcement of the Coal Combustion Residuals (CCR) Rule. EPA’s review of publicly posted CCR Rule compliance information already suggests widespread noncompliance with CCR regulations. In enforcing the CCR Rule, coal ash units would be made more resilient to extreme weather events and contamination in communities near CCR units would be reduced.

⁵⁴ For additional information on the Executive Order on *Tackling the Climate Crisis at Home and Abroad*, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

EPA expects that the six current national initiatives can have a significant impact on protecting the health of communities with potential EJ concerns and addressing climate change.

- Creating Cleaner Air for Communities – focuses on noncompliance that results in excess emissions of either volatile organic compounds or hazardous air pollutants, especially where emissions may adversely affect an area’s attainment of National Ambient Air Quality Standards or may adversely affect vulnerable populations.
- Stopping Aftermarket Defeat Devices for Vehicles and Engines – focuses on stopping the manufacture, sale, and installation of devices on vehicles and engines that defeat emissions controls, which contribute excess pollution, harming public health and air quality.
- Reducing Hazardous Air Emissions from Hazardous Waste Facilities – focuses on improving compliance with RCRA regulations that require the control of organic air emissions from certain hazardous waste management units and activities.
- Reducing Risks of Accidental Releases at Industrial and Chemical Facilities – focuses on decreasing the likelihood of chemical accidents, thereby reducing risk to communities.
- Reducing Significant Non-Compliance with National Pollutant Discharge Elimination System (NPDES) Permits – focuses on improving compliance rates with NPDES permits and ensuring the worst violations are timely and appropriately addressed.
- Reducing Non-Compliance with Drinking Water Standards at Community Water Systems – focuses on ensuring safe and clean drinking water from regulated community drinking water systems.

Performance Measure Targets:

(PM 434) Millions of pounds of pollutants and waste reduced, treated, or eliminated through concluded enforcement actions.	FY 2022 Target	FY 2023 Target
	325	325
(PM 436) Number of open civil judicial cases more than 2.5 years old without a complaint filed.	FY 2022 Target	FY 2023 Target
	99	96
(PM 446) Quarterly percentage of Clean Water Act National Pollutant Discharge Elimination System (NPDES) permittees in significant noncompliance with their permit limits.	FY 2022 Target	FY 2023 Target
	10.1	10.1

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$6,907.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$24,696.0 / +49.0 FTE) This program change will support increased focus on EJ and climate change by developing and implementing a comprehensive action plan for integrating climate and EJ considerations throughout all aspects of EPA’s Civil Enforcement Program (e.g., private parties and federal facilities) in headquarters and across EPA’s 10 regional offices. This investment includes \$8.7 million in payroll.

- (+\$7,005.0 / +28.0 FTE) This program increase will allow EPA to address noncompliance with the CCR rule. Through enforcement, EPA will ensure that required corrective actions are taken at facilities nationwide and pursue enforcement in a sector that has shown widespread non-compliance. The Program will use these resources to enforce the regulatory requirements at noncomplying facilities thereby addressing the risks posed by CCR unlined impoundments and landfills, including risks to ecological and residential receptors, notably drinking water sources and nearby communities. This investment includes \$5.0 million in payroll.
- (+\$1,998.0 / +5.8 FTE) This program increase will allow EPA to expand the work of the Interagency HFC Task Force, which is focused on ensuring compliance with the AIM Act. The task force will identify, intercept, and interdict illegal HFC imports, share data to support allowances, train customs officers and enforcement personnel, and address common HFC import experiences with other countries. EPA also will need to implement new HFC allowance modules and expand its ozone depleting substances (ODS) tracking system to assess ongoing compliance. This investment includes \$1.0 million in payroll.
- (+\$646.0 / +3.0 FTE) This program increase will allow EPA to expand protection for fenceline communities via increased monitoring, inspections, community outreach, compliance assistance and enforcement to ensure facilities have measures in place to prevent oil discharges and chemical accidents, including those that result from extreme weather events (*e.g.*, flooding). This investment includes \$536.0 thousand in payroll.
- (+\$418.0 / +2.2 FTE) This program increase will allow EPA to identify releases of PFAS to the air, land, and water by actively investigating and pursuing civil enforcement to address endangerments and prevent exposure under RCRA, TSCA, CWA, SDWA, and CAA, at the yet-unknown number of processing facilities and waste disposal facilities where PFAS are suspected of contaminating various environmental media. This investment includes \$393.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA’s organic statute); Act to Prevent Pollution from Ships (MARPOL Annex VI); American Innovation and Manufacturing Act; Clean Air Act; Clean Water Act; Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act; Marine Protection, Research, and Sanctuaries Act; Oil Pollution Act; Resource Conservation and Recovery Act; Safe Drinking Water Act; and Toxic Substances Control Act.

Criminal Enforcement

Program Area: Enforcement

Goal: Enforce Environmental Laws and Ensure Compliance

Objective(s): Hold Environmental Violators and Responsible Parties Accountable

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$49,588</i>	<i>\$51,275</i>	<i>\$61,411</i>	<i>\$10,136</i>
Hazardous Substance Superfund	\$8,469	\$7,647	\$8,088	\$441
Total Budget Authority	\$58,057	\$58,922	\$69,499	\$10,577
Total Workyears	238.6	257.7	291.0	33.3

Program Project Description:

EPA's Criminal Enforcement Program enforces the Nation's environmental laws through targeted investigation of criminal conduct, committed by individual and corporate defendants, that threatens public health and the environment. EPA's criminal enforcement agents (Special Agents) investigate violations of environmental statutes and associated violations of Title 18 of the United States Code such as fraud, conspiracy, false statements, and obstruction of justice.

The Criminal Enforcement Program specifically collaborates with other EPA offices, the Environmental Justice (EJ) Program, and the U.S. Department of Justice (DOJ) to ensure that our enforcement and compliance assurance work addresses the impacts of illegal environmental pollution activities on overburdened communities and to expand outreach opportunities through those offices.

Criminal Enforcement Special Agents are assisted in the Criminal Enforcement Program by forensic scientists, attorneys, technicians, engineers, and other experts. EPA's criminal enforcement attorneys provide legal and policy support for all the Program's responsibilities, including forensics and expert witness preparation, to ensure that program activities are carried out in accordance with legal requirements and the policies of the Agency. These efforts support environmental crime prosecutions primarily by the U.S. Attorneys and the DOJ's Environmental Crimes Section. In FY 2021, the conviction rate for criminal defendants charged as a result of EPA criminal enforcement investigations was 96 percent, with a total of twenty-eight years of incarceration for defendants sentenced in criminal enforcement investigations.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 3/Objective 3.1, Hold Environmental Violators and Responsible Parties Accountable in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an additional \$10.1 million and 33.1 FTE to expand EPA's capacity for criminal enforcement and work to support the criminal program, with an emphasis in

several priority areas, including communities with EJ concerns and to combat climate change. This FTE increase will assist the EPA in rebuilding its Criminal Enforcement Agent workforce, working towards the goal of 200 Special Agents stipulated in the Pollution Prosecution Act of 1990.

In FY 2023, EPA will continue to focus on the most egregious cases (e.g., significant human health, environmental, and deterrent impacts), while balancing its overall case load across all environmental statutes. Program goals and priorities include the following:

- In FY 2023, EPA will continue to prioritize criminal enforcement resources for investigations which involve vulnerable communities or those that have historically been overburdened by pollution. This effort has been focused as a Criminal Enforcement Program Initiative with an emphasis on addressing environmental crime and crime victims in these areas. The Criminal Investigation Division (CID) works with partners at the DOJ to jointly prosecute wrongdoing and reduce the impact pollution has on these areas through investigation, judicial actions, and settlements while maintaining case initiation standards and reducing the impact of pollution.
- In FY 2023, EPA's Environmental Crime Victim Witness Assistance Program will closely align its implementation of the Criminal Victims' Rights Act and the Victims' Rights and Restitution Act with EPA's EJ work. Activities will include data mining and mapping to identify where communities with EJ concerns, crime victims, and public health impacts overlap. This strategy will aid the Program in identifying sources of pollution impacting these communities and to focus criminal enforcement resources on the Nation's most overburdened, underserved, or vulnerable populations and, where appropriate, use of crime victim program resources and emergency funds to assist individuals in such communities.
- In FY 2023, the Criminal Enforcement Program will continue implementing its responsibilities as a part of the HFC (Hydrofluorocarbons) Enforcement Task Force, working with OAR and the Department of Homeland Security to ensure U.S. compliance with the American Innovation and Manufacturing (AIM) Act. The Task Force will continue to identify, intercept, and interdict illegal HFC imports, share data to support allowances, train customs officers and enforcement personnel, and address common HFC import experiences with other countries. EPA will need to continue standing up its new enforcement and compliance regime. EPA would leverage our experience working with Customs and Border Protection (CBP), DOJ and other federal partners to successfully enforce federal laws related to HFCs. Critically important to success in this media, are dedicated analysts in the Criminal Enforcement Program to research, assess and coordinate with federal partners, private industry, and task force members.
- In addition, in FY 2023 the Criminal Enforcement Program will continue to work with Interpol and other federal partners to combat climate change through domestic and international law enforcement collaboration. This work will include formalized information sharing related to preventing illegal importation of prohibited products that contribute to global climate instability and capacity building with other countries.

- In FY 2023, the Criminal Enforcement Program also will increase its collaboration and coordination with the Civil Enforcement Program to ensure that EPA's Enforcement Program identifies the most egregious cases and responds to them effectively and efficiently, to ensure compliance and defer future conduct. The Agency will continue to investigate violations of environmental statutes and associated violations of Title 18 of the United States Code to protect public health and the environment.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$2,536.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$7,120.0 / +32.0 FTE) This program increase supports expanding EPA's capacity for criminal enforcement, the expansion of the enforcement in communities with EJ concerns, enforcement of climate-related regulations, and increased polluter accountability. This investment includes \$6.91 million in payroll.
- (+\$480.0 / +1.1 FTE) This program increase will ensure EPA has the capacity and technical expertise to investigate, analyze, sample, test, and transport HFCs. The increase in FTE will allow analysts to research, assess, and coordinate with federal partners, private industry, and task force members. This investment includes \$237.0 thousand in payroll.

Statutory Authority:

Title 18 of the U.S.C.; 18 U.S.C. § 3063; Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Resource Conservation and Recovery Act; Clean Water Act; Safe Drinking Water Act; Clean Air Act; Toxic Substances Control Act; Emergency Planning and Community Right-To-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act; Ocean Dumping Act; Rivers and Harbors Act; Pollution Prosecution Act of 1990; American Innovation and Manufacturing Act.

NEPA Implementation

Program Area: Enforcement

Goal: Enforce Environmental Laws and Ensure Compliance

Objective(s): Detect Violations and Promote Compliance

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$15,809</i>	<i>\$16,943</i>	<i>\$19,883</i>	<i>\$2,940</i>
Total Budget Authority	\$15,809	\$16,943	\$19,883	\$2,940
Total Workyears	96.4	89.9	90.9	1.0

Program Project Description:

EPA's National Environmental Policy Act (NEPA) Implementation Program implements the environmental requirements of NEPA and Section 309 of the Clean Air Act (CAA) to review other federal agency environmental impact statements (EIS) and other federal agencies' NEPA regulations. In addition, EPA's NEPA Implementation Program manages e-NEPA, a web-based application that serves as the official EIS filing system and clearinghouse for all federal EISs on behalf of the Council on Environmental Quality (CEQ) in accordance with a Memorandum of Understanding (MOU) with CEQ.⁵⁵ The Program also oversees EPA's actions subject to NEPA (40 CFR Part 6) and reviews of EISs for non-governmental activities in Antarctica (40 CFR Part 8). Under the CAA §309 Program, EPA's focus on early engagement with other federal agencies is consistent with NEPA planning principles and improves identification of potential issues and solutions early in the planning process to reduce impacts and improve environmental outcomes. EPA also assists agencies in the analyses of potential impacts related to climate change, including impacts from greenhouse gas (GHG) emissions, and potential impacts to communities with environmental justice (EJ) concerns.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 3/Objective 3.2, Detect Violations and Promote Compliance in the *FY 2022 - 2026 EPA Strategic Plan*.

EPA is pursuing a multi-year process of reconstructing the NEPA Program to both build basic capacities and inject significantly more robust considerations of climate change mitigation and adaptation, as well as EJ, across the Agency's NEPA practitioner community and into the reviews of every qualifying federal action and federal EIS. Contract support for non-inherently governmental functions coupled with review process efficiencies will assist in meeting current requirements to analyze and identify potential impacts of planned actions across the Federal government. Accordingly, this increase in FY 2023 resources will assist the Agency in fulfilling

⁵⁵ Memorandum of Agreement No. 1 Between the Council on Environmental Quality and the Environmental Protection Agency, October 1977.

its current statutory obligation to review and comment on every federal agency EIS in advance of contemplated outyear FTE restoration requests.

EPA will continue to focus its reviews on areas where the Agency has statutory authority and subject matter expertise. EPA will continue to work with the Office of Management and Budget (OMB), CEQ, and other federal agencies to evaluate ways to coordinate, streamline, and improve the NEPA process, as well as to incorporate robust science-based analyses of project-related impacts and potential measures to minimize and mitigate those impacts. In FY 2023 and subsequent budget years, as a result of the American Rescue Plan Act of 2021 (P.L. 117-2),⁵⁶ the Infrastructure Investment and Jobs Act (IIJA) and other economic recovery actions, federal agencies expect a substantial increase in funded actions which will likely require EISs and EPA environmental review. In addition, due to policies and initiatives such as EO 14017 *America's Supply Chains*⁵⁷ and the Bureau of Land Management and EPA Energy Act MOU, EPA anticipates a substantial increase in priority actions requiring expedited reviews. Critical minerals mining projects are expected to trigger EISs and will require special expertise at EPA to facilitate timely inter-agency coordination on environmental reviews and permitting actions. EPA anticipates that the existing workload will likely double based on interagency discussions hosted by CEQ and OMB.

Drawing from experiences with FAST-41 and other priority initiatives, EPA's early engagement with lead federal agencies at the beginning of the NEPA scoping process improves the quality of EISs and minimizes delays. However, this early engagement will require substantially more staff time throughout the NEPA process.

Updates to the NEPA regulations (40 CFR Parts 1500-1518) and other related federal regulations may substantively impact the number or scope of environmental reviews. EPA regularly supports and assists CEQ in the development of guidance through the 1977 EPA and CEQ MOU. In FY 2023, the NEPA Implementation Program will continue to develop updated guidance, tools, and resources to assist federal agencies and CAA §309 reviewers in transparent, consistent, and high-quality identification and disclosure of opportunities to avoid, minimize, and mitigate impacts to communities with EJ concerns; reduce impacts of GHG emissions in all major sectors; and identify and develop climate-resilient alternatives. This will include identifying opportunities to update EPA's topic specific technical tools for NEPA reviews that are regularly used by multiple agencies;⁵⁸ improve and enhance the NEPAAssist application to incorporate tools and/or additional layers of data or information, as needed, such as an enhanced interface between NEPAAssist and EJSCREEN updates. It also will include identifying other tools and support resources as CEQ updates guidance and provides direction with respect to climate and EJ screening tools.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

⁵⁶ For additional information, please refer to: <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

⁵⁷ For additional information, please refer to: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/>.

⁵⁸ For additional information, please refer to: <https://www.epa.gov/NEPA/national-environmental-policy-act-policies-and-guidance>.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$830.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$400.0) This program increase is to embed climate change and EJ considerations within the EPA's environmental review process.
- (+\$1,710.0 / +1.0 FTE) This program change is to support the increase in environmental reviews of Federal EISs and to enhance the interface between the NEPAssist geospatial planning tool and EJSCREEN screening and mapping tool to ensure EJ impacts are considered by all Federal NEPA planners when using the tool. This investment includes \$176.0 thousand in payroll.

Statutory Authority:

National Environmental Policy Act (NEPA); Clean Air Act (CAA) § 309; Antarctic Science, Tourism, and Conservation Act; Clean Water Act § 511(c); Endangered Species Act; National Historic Preservation Act; Archaeological and Historic Preservation Act; Fishery Conservation and Management Act; Fish and Wildlife Coordination Act; and Title 41 of the Fixing America's Surface Transportation Act.

Environmental Justice

Environmental Justice

Program Area: Environmental Justice

Goal: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective(s): Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$10,343</i>	<i>\$11,838</i>	<i>\$294,938</i>	<i>\$283,100</i>
Hazardous Substance Superfund	\$681	\$826	\$5,876	\$5,050
Total Budget Authority	\$11,024	\$12,664	\$300,814	\$288,150
Total Workyears	34.7	39.9	211.9	172.0

Program Project Description:

EPA's Environmental Justice (EJ) Program coordinates the Agency's efforts to address the needs of overburdened and vulnerable communities by decreasing environmental burdens, increasing environmental benefits, and working collaboratively with all stakeholders to build healthy, sustainable communities based on residents' needs and desires. EPA's EJ Program focuses on collaboration as a central principle and method of advancing justice. The program provides grants, technical assistance, and expert consultative support to communities, partners at all levels of government, and other stakeholders such as academia, business, and industry to achieve protection from environmental and public health hazards for people of color, low-income communities, and indigenous communities.

Work in this program directly supports the *FY 2022-2026 EPA Strategic Plan Goal 2, Take Decisive Action to Advance Environmental Justice and Civil Rights*, and Administrator Michael Regan's message in the memo titled "Our Commitment to Environmental Justice" issued on April 7, 2021.⁵⁹ In addition, this work supports implementation of Executive Order (EO) 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*,⁶⁰ and EO 14008 *Tackling the Climate Crisis at Home and Abroad*.⁶¹ In accordance with the American's Water Infrastructure Act of 2018 (P.L. 115-270), every EPA regional office employs a dedicated EJ coordinator, and the Agency maintains a list of these persons on EPA's website.⁶²

⁵⁹ For additional information, please refer to: <https://www.epa.gov/sites/default/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf>.

⁶⁰ For additional information, please refer to: <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

⁶¹ For additional information, please refer to: <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁶² For additional information, please refer to: <https://www.epa.gov/environmentaljustice/forms/contact-us-about-environmental-justice>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 2/Objective 2.2, Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities in the *FY 2022 - 2026 EPA Strategic Plan*. Work in this program also directly supports progress toward the Agency Priority Goal: *Deliver tools and metrics for EPA and its Tribal, state, local, and community partners to advance environmental justice and external civil rights compliance. By September 30, 2023, EPA will develop and implement a cumulative impacts framework, issue guidance on external civil rights compliance, establish at least 10 indicators to assess EPA's performance in eliminating disparities in environmental and public health conditions, and train staff and partners on how to use these resources.*

In FY 2023, EPA requests an additional \$283.1 million and 170 FTE for the Environmental Justice Program in the EPM appropriation. This investment will allow the Agency to develop, manage, and award competitive grants to reduce the historically disproportionate health impacts of pollution in communities with EJ concerns as well as to increase support for existing grant projects. This investment also will support climate initiatives in communities with EJ concerns, as well as EJ training, education, and outreach programs. This investment will provide paramount support to community-based organizations, indigenous organizations, states, tribes, local governments, and territorial governments in pursuit of identifying and addressing EJ issues.

In FY 2023, EPA will continue to support the successful completion of grant projects funded in previous fiscal years while continuing to improve the delivery of grant investments to develop partnerships with community entities to improve the health outcomes of residents and workers in communities with EJ concerns. This investment will support climate initiatives in communities with EJ concerns as well as provide critical support to community-based organizations, indigenous organizations, states, tribes, local governments, territorial governments, and State and local EJ advisory councils, in pursuit of identifying and addressing EJ issues through multi-partner collaborations.

In FY 2023, the existing and new grant programs include:

- 1) a \$50 million Environmental Justice Competitive Grant Program (formerly named Environmental Justice Collaborative Problem-Solving Cooperative Agreements);
- 2) a \$25 million Environmental Justice Community Grants Program (formerly named Environmental Justice Small Grants) that would continue to competitively award a comprehensive suite of grants to non-profit, community-based organizations to reduce the disproportionate health impacts of environmental pollution in communities with EJ concerns;
- 3) a \$25 million Environmental Justice State Grant Program (formerly named State Environmental Justice Cooperative Agreements) that would continue funding for states, local governments, and territories;
- 4) a \$25 million Tribal Environmental Justice Grant Program (formerly named Tribal Environmental Justice Cooperative Agreements) to support work to eliminate disproportionately adverse human health or environmental effects in Tribal and Indigenous communities; and

- 5) a \$15 million competitive, community-based Participatory Research Grant Program to award competitive grants to higher education institutions that develop partnerships with community entities to improve the health outcomes of residents and workers in communities with EJ concerns.

EJ National Program

In FY 2023, EPA will continue to develop the EJ National Program to support the robust, consistent, and meaningful integration of EJ considerations across all EPA policies, programs, and activities in addition to providing much needed direct support to communities; partners at the state, tribal, and local levels; and other stakeholders, such as academia, business, and industry. The EJ National Program continues to provide essential support to other EPA programs working to consider environmental justice in environmental permitting, rulemaking, enforcement and compliance, emergency/disaster response and recovery, and climate change priorities. The EJ Program also continues to engage communities and provide tools, data, and methods to help other EPA programs analyze the EJ implications of policy decisions, such as through National Environmental Policy Act processes or the consideration of costs and benefits in economic analyses.

The FY 2023 investment also will provide EPA's regional offices with more capacity to integrate environmental justice across their programs and regularly engage with and support community and state, tribal, and local partners. Key activities to support EPA's ability to integrate EJ across all policies, programs, and activities are reflected in EPA's Agency Priority Goal (APG) related to EJ and civil rights compliance. Strategy 1 of this APG focuses on the development of a framework to consider cumulative impacts across the range of EPA's policies, programs, and activities, and Strategy 3 commits to development of 10 indicators for eliminating disparities in communities with EJ concerns. These are watershed commitments in EPA's three decades of EJ practice. EPA will initiate work on these strategies in FY 2022 and will prioritize completion by the APG's deadline at the end of FY 2023.

Engagement with Partners, Stakeholders, and Communities

EPA pursues a broad array of activities to support efforts by partners, stakeholders, and communities to advance environmental justice. For instance, the EJ Program hosts a series of training webinars focused on integrating EJ at all levels of government, with special focus on state agencies, tribal governments and indigenous populations, and territorial governments and insular areas such as Pacific Island Nations. During FY 2022, this included partnership with the Environmental Council of States to provide additional and more finely tailored resources to support state efforts to advance equity and justice in their agencies.

The EJ webinar series for tribes and indigenous peoples enhances EJ integration, builds capacity, raises awareness of EPA and other federal programs and resources, and provides technical assistance to tribes and indigenous peoples on priority environmental, public health, and other EJ concerns. This webinar series began in November 2020 and is planned to continue for the

foreseeable future.⁶³ There have been 16 webinars, 10,395 registrants, and 3,948 participants. EPA also has offered two webinars to the Pacific Islands and their indigenous peoples to present information more specifically relevant to their concerns. The webinars have consistently received high ratings from the participants.

EPA also has hosted regular National EJ Community Engagement calls throughout FY 2021 and FY 2022 and will continue to do so in FY 2023.⁶⁴ During this time, EPA has completed 14 such national engagement calls, eight of which focused on Justice40 and the six EPA Justice40 pilot programs. During the calls held from February 17, 2021, through February 22, 2022, approximately 6,300 participants engaged on a wide spectrum of topics related to EJ, the Justice40 Initiative, and EJ mapping and screening. Each call featured opportunities, such as expansive listening sessions, during which speakers interacted with comments and questions from participants. EPA also has hosted three public “office hours” for users of EJScreen to engage with the EPA EJScreen team with questions and feedback for further enhancements to the tool. EPA also continues to communicate through its email listserv and social media presence.

EPA also continues to directly engage community organizations and leaders while supporting internal EPA efforts to integrate EJ considerations into all EPA policies, programs, and activities. In the first five months of FY 2022, EPA’s EJ Program executed more than 235 engagements and trainings inside of the Agency that reached more than 5,000 EPA staff. Additionally, the EJ Program completed more than 200 external engagements, collaborative initiatives, and trainings with and in support of community groups and other partners. The EJ Program also worked with an additional 94 partner organizations to directly engage and support over 4,000 community members.

In FY 2023, EPA will continue to develop education, training, and outreach resources associated with EJ, including 1) an EJ Training Program to increase the capacity of residents in communities with EJ concerns to identify and address negative impacts; 2) outreach centers in the EPA regional offices to work directly with communities with EJ concerns; and 3) an EJ Clearinghouse to serve as online resources for EJ information.

EJ Grants Program

EPA’s FY 2021 EJ grants program saw a significant increase in the scope and level of funding due to additional Congressional resource allocation. EPA relaunched the State Environmental Justice Cooperative Agreement (SEJCA) Program. EPA made the SEJCA Program available to proposals from states, tribes, local governments, and territorial governments and emphasized projects focused on engaging and supporting community efforts in response to the COVID-19 pandemic. Over the course of FY 2021 and into FY 2022, EPA awarded an unprecedented \$18.4 million to 154 grant recipients through the EJ grants programs. This included:

- 21 SEJCA awards in fall 2021;
- 34 EJ Collaborative Problem Solving (EJCPS) awards;
- 99 EJ Small Grants selected in 2021 and awarded in winter/spring 2022;

⁶³ For additional information, please refer to: <https://www.epa.gov/environmentaljustice/environmental-justice-tribes-and-indigenous-peoples>.

⁶⁴ For additional information, please refer to: <https://www.epa.gov/environmentaljustice/community-outreach-and-engagement>.

Of the total amount awarded, over \$13.5 million came from the American Rescue Plan (ARP) and approximately \$4.5 million from base EJ annual appropriations. Of the 154 projects funded, 128 received at least partial funding through the ARP, and 26 are receiving full funding through base EJ appropriations with additional funds from EPA’s Office of Transportation and Air Quality to support specific projects focused on EJ and transportation/goods movement issues.

The EJ grants program funding priorities over this period included projects addressing public education, training, emergency planning, and/or investigations on impacts of COVID-19 on underserved communities in addition to projects addressing climate and disaster resiliency and emergency preparedness. For the first time ever, EPA’s EJ Program created a set-aside exclusively for small nonprofit organizations (defined as organizations with 10 or fewer full-time employees) in an attempt to ensure the EJ funding reached lower-capacity and new organizations with capacity building needs. Of the proposals that received EJ Small Grant funding, 84 percent went to qualifying small nonprofits.

Interagency Coordination

In FY 2023, EPA will continue to support the efforts of the National Environmental Justice Advisory Council (NEJAC) in addition to supporting the efforts of the White House Environmental Justice Advisory Council (WHEJAC) established by EO 14008.⁶⁵ EPA also will support the Council on Environmental Quality (CEQ) as it leads the Interagency Council on Environmental Justice as well as a suite of EPA bi- and multi-lateral initiatives to support and partner directly with other federal agencies.

EJScreen

In FY 2023, EPA will continue to support and improve our national EJ screening and mapping tool (EJScreen). Efforts will focus on identifying and adding valuable new data sources to the tool with a focus on climate-relevant data, in addition to enhancing user interface elements. EPA will enhance EJScreen based upon user requests and feedback – from both within EPA and from external users – to further inform equitable decision making across the federal government in addition to providing more robust and diverse data to effectively prioritize communities in need. These enhancements will enable EPA to further focus program design to benefit communities with EJ concerns and those most at risk of climate change. In addition, EPA’s budget includes resources to update EPA’s IT systems to provide ongoing support, maintenance, and development of the Climate and Economic Justice Screening Tool (CEJST), as outlined in EO 14008.

Performance Measure Targets:

(PM EJCR01) Percentage of EPA programs that seek feedback and comment from the public that provide capacity-building resources to communities with environmental justice concerns to support their ability to meaningfully engage and provide useful feedback to those programs.	FY 2022 Target	FY 2023 Target
		40

⁶⁵ For more information, please visit: <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>

(PM EJCR02) Percentage of EPA programs utilizing extramural vehicles to compensate organizations and individuals representing communities with environmental justice concerns when engaged as service providers for the Agency.	FY 2022 Target	FY 2023 Target
		75
(PM EJCR03) Percentage of environmental justice grantees whose funded projects result in a governmental response.	FY 2022 Target	FY 2023 Target
		No Target Established
(PM EJCR04) Percentage of written agreements between EPA and tribes or states implementing delegated authorities that include commitments to address disproportionate impacts.	FY 2022 Target	FY 2023 Target
		25
(PM EJCR05) Percentage of state-issued permits reviewed by EPA that include terms and conditions that are responsive to environmental justice concerns and comply with civil rights obligations.	FY 2022 Target	FY 2023 Target
		TBD
(PM EJCR07) Percentage of EPA national program and regional offices that extend paid internships, fellowships, or clerkships to college students from diverse backgrounds.	FY 2022 Target	FY 2023 Target
		50
(PM EJCR08) Percentage of significant EPA actions with environmental justice implications that respond to environmental justice concerns and reduce or address disproportionate impacts.	FY 2022 Target	FY 2023 Target
		40
(PM EJCR09) Percentage of programs that have developed clear guidance on the use of justice and equity screening tools.	FY 2022 Target	FY 2023 Target
		100
(PM EJCR10) Percentage of EPA programs that work in and with communities that do so in ways that are community-driven, coordinated and collaborative, support equitable and resilient community development, and provide for meaningful involvement and fair treatment of communities with environmental justice concerns.	FY 2022 Target	FY 2023 Target
		TBD
(PM EJCR11) Number of established EJ collaborative partnerships utilizing the Key Principles for Community Work (community-driven, coordinated, and collaborative).	FY 2022 Target	FY 2023 Target
		TBD
(PM EJCR12) Percentage of EPA programs and regions that have identified and implemented opportunities to integrate environmental justice considerations and strengthen civil rights compliance in their planning, guidance, policy directives, monitoring, and review activities.	FY 2022 Target	FY 2023 Target
	15	30
(PM EJCR13) Percentage of EPA regions and national programs that have established clear implementation plans for Goal 2 commitments relative to their policies, programs, and activities and made such available to external partners.	FY 2022 Target	FY 2023 Target
		100
(PM EJCR18) Number of information sharing sessions and outreach and technical assistance events held with overburdened and underserved communities and environmental justice advocacy groups on civil rights and environmental justice issues.	FY 2022 Target	FY 2023 Target
	8	12

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$113.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$89,586.0 / +69.5 FTE) This program change supports EJ work across the Agency, including substantial increases for FTE support. This investment supports the significantly expanded base activity and agencywide coordination required across the EJ Program. This increase includes \$11.536 million in payroll.
- (+\$11,501.0 / +51.5 FTE) This program change supports EJ work in the regions. This investment supports the significantly expanded base activity and agencywide coordination required in the regional offices. This increase includes \$8.309 million in payroll.
- (+\$10,000.0 / +12.0 FTE) This program change is an increase to establish EPA outreach centers housed in EPA regional offices to connect directly with communities, hold hearings, and support local EJ efforts. This investment includes \$1.936 million in payroll.
- (+\$50,000.0 / +5.0 FTE) This program change increases the Environmental Justice Competitive Grant Program aiming to broadly reduce the disproportionate health impacts of environmental pollution in communities with EJ concerns. This grant program was formerly known as the EJ Collaborative Problem-Solving Cooperative Agreements, and appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$807.0 thousand in payroll.
- (+\$25,000.0 / +3.0 FTE) This program change increases the Environmental Justice Community Grant Program. Eligible recipients would be nonprofit, community-based organizations that conduct activities to reduce the disproportionate health impacts of environmental pollution in communities with EJ concerns. This grant program was formerly known as the EJ Small Grants, and appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$484.0 thousand in payroll.
- (+\$25,000.0 / +3.0 FTE) This program change is an increase to establish an Environmental Justice State Grant Program that would establish or support state government EJ programs. Appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$484.0 thousand in payroll.
- (+\$25,000.0 / +3.0 FTE) This program change is an increase to establish a Tribal Environmental Justice Grant Program. This program would support tribal work to eliminate disproportionately adverse human health or environmental effects in Tribal and Indigenous communities. Appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$484.0 thousand in payroll.

- (+\$15,000.0 / +2.0 FTE) This program change is an increase to establish a competitive, community-based Participatory Research Grant Program. Eligible recipients would be higher education institutions that aim to develop partnerships with community entities to improve the health outcomes of residents and workers in communities with EJ concerns. Appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$323.0 thousand in payroll.
- (+\$10,000.0 / +3.0 FTE) This program change is an increase to establish an Environmental Justice Training Program to increase the capacity of residents of underserved communities to identify and address disproportionately adverse human health or environmental effects. Appropriations language has been provided in the proposed EPM Bill Language. This investment includes \$484.0 thousand in payroll.
- (+\$5,900.0 / +4.0 FTE) This program change is an increase for EJScreen to improve how the Agency utilizes nationally consistent data that combines environmental and demographic indicators to map and identify communities with environmental justice concerns. In addition, resources are included to update EPA's IT systems to support the Climate and Economic Justice Screening tool. This investment includes \$645.0 thousand in payroll.
- (+\$4,000.0 / +5.0 FTE) This program change is an increase to support the National Environmental Justice Advisory Council (NEJAC) and other federal advisory council activities. The EJ Program will provide funding and support for the White House Environmental Justice Advisory Council (WHEJAC) to advise the Interagency Council and Chair of the Council on Environmental Quality (CEQ). This investment includes \$807.0 thousand in payroll.
- (+\$4,000.0 / +3.0 FTE) This program change increases legal support with a focus on EJ issues. This investment includes \$484.0 thousand in payroll.
- (+\$3,000.0 / +3.0 FTE) This program change increases external EJ coordination with other federal agencies. This includes developing and expanding federal best practices around EJ and supporting other federal efforts to expand EJ programs. This investment includes \$484.0 thousand in payroll.
- (+\$5,000.0 / +3.0 FTE) This program change is an increase to establish an Environmental Justice Clearinghouse, which would serve as an online resource for information on EJ, including training materials and a directory of experts and organizations with the capability to provide advice or technical assistance to underserved communities. This investment includes \$484.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); American Rescue Plan Act of 2021 (Pub. L. 117-2).

Geographic Programs

Geographic Program: Chesapeake Bay

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$77,876</i>	<i>\$87,500</i>	<i>\$90,568</i>	<i>\$3,068</i>
Total Budget Authority	\$77,876	\$87,500	\$90,568	\$3,068
Total Workyears	38.0	38.2	38.2	0.0

Program Project Description:

The Chesapeake Bay is the largest estuary in the United States with a drainage area that covers six states in the mid-Atlantic. The Bay is not only treasured for recreational purposes but also serves as a vital resource for ecological and economic activities in the region and beyond. The Chesapeake Bay Program is a voluntary partnership initiated in 1983 that now includes the Chesapeake Bay watershed states (Delaware, Maryland, New York, Virginia, Pennsylvania, and West Virginia), the District of Columbia, the Chesapeake Bay Commission, and the federal government. EPA represents the federal government on the partnership's Chesapeake Executive Council and, under the authority of Section 117 of the Clean Water Act, works with the Executive Council to coordinate activities of the partnership. On June 16, 2014, the Chesapeake Bay Program partners signed the most recent Chesapeake Bay Watershed Agreement,⁶⁶ which provides for the first time the Bay's headwater states (Delaware, New York, and West Virginia) with full partnership in the Bay Program. The Agreement establishes 10 goals and 31 outcomes including sustainable fisheries, water quality, vital habitats, climate change, and toxic contaminants, with Management Strategies and two-year Logic & Action Plans covering all 31 outcomes.⁶⁷

EPA, the watershed jurisdictions, and other key federal agencies set two-year water quality milestones that measure progress made in achieving the Bay Total Maximum Daily Load (TMDL) and the jurisdictions' Watershed Implementation Plans.⁶⁸ The TMDL satisfies a requirement of the Clean Water Act and EPA commitments under Court-approved consent decrees for Virginia and the District of Columbia dating to the late 1990s.⁶⁹ The TMDL is designed to ensure all nitrogen, phosphorus, and sediment pollution control efforts needed to restore the Bay and its tidal rivers are in place by 2025.

⁶⁶ The Chesapeake Bay Watershed Agreement (2014) available at:

http://www.chesapeakebay.net/documents/FINAL_Ches_Bay_Watershed_Agreement.withsignatures-Hires.pdf.

⁶⁷ For additional information on the progress being achieved, visit: <https://www.epa.gov/restoration-chesapeake-bay>.

⁶⁸ The federal milestones related to water quality in the Chesapeake Bay watershed are available at http://executiveorder.chesapeakebay.net/EO_13508_Water_Quality_Milestones-2012-01-06.pdf. The jurisdictional milestones are available at: <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-milestones>.

⁶⁹ The Chesapeake Bay TMDL, available at: <http://www.epa.gov/chesapeake-bay-tmdl/>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will focus on supporting implementation of the two-year logic and action plans for the 25 management strategies developed under the Agreement, with particular focus on accelerating implementation of outcomes where progress is lagging. The program is increasing focus on environmental justice ensuring the benefits of the Chesapeake Bay Program are distributed equitably. In addition, the program is increasing efforts in the climate change space by focusing initiatives on the resiliency of the watershed. Specific emphases include:

- Implementing the water quality outcomes that describe the commitment of the Agreement signatories for having all practices in place by 2025 to achieve the necessary pollutant reductions;
- Accelerating implementation of outcomes that help keep the watershed resilient in the face of climate change (including forest and wetland protection and restoration);
- Maintaining the historically strong submerged aquatic vegetation, and tidal and non-tidal water quality monitoring programs implemented through state grants and federal interagency agreements;
- Ensuring the most up-to-date science is used throughout the Chesapeake Bay Program to support decision-making, implementation, and future condition assessment (for example, improving computer models to help predict the impact of climate change on the Chesapeake Bay Program's ability to meet water quality standards in the tidal waters of the Chesapeake Bay); and
- Implementing an action plan to improve diversity, equity, inclusion, and justice in Chesapeake Bay Program restoration efforts.

Environmental results, measured through data collected by the states and shared with the federal government, show the importance of the investment that federal, state, and local governments have made in providing clean and safe water. Every year, the Chesapeake Bay Program uses available monitoring information from the 92 segments of the Chesapeake Bay to estimate whether each segment is attaining criteria for one or more of its designated uses. EPA, along with other federal, state, and academic partners, are using this information to demonstrate progress toward meeting water quality standards and the Bay TMDL.

States have reported that, as of 2020, best management practices to reduce pollution are in place to achieve 45 percent of the nitrogen reductions, 65 percent of the phosphorus reductions, and 100 percent of the sediment reductions needed to attain applicable water quality standards when compared to the 2009 baseline established in the Bay TMDL.⁷⁰

EPA will continue to provide the Chesapeake Bay Program partnership with funding and technical assistance, track and report progress, and coordinate and facilitate partnership efforts to reach our mutual goals of a healthy Bay and watershed. While continuing progress toward restoring the Bay watershed, EPA and other Executive Council members signed and released the historic *Statement*

⁷⁰ For more information, please see <https://www.chesapeakeprogress.com/clean-water/watershed-implementation-plans>.

*in Support of Diversity, Equity, Inclusion and Justice.*⁷¹ This statement reaffirmed the Executive Council's commitment to recruit and retain staff and volunteers that reflect the diversity of the watershed, foster a culture of inclusion and respect across all partner organizations, and ensure the benefits of our science, restoration, and partnership programs are distributed equitably without disproportionate impacts on overburdened and underserved communities.

Additionally, EPA is working to integrate climate change in Bay restoration efforts. EPA is addressing climate change in three ways: 1) in 2025, predicting the impact of 2035 climate changes on water quality and adjusting pollution targets; 2) understanding adaptations needed in the watershed and coastal regions; and 3) maintaining or improving the watershed's resiliency to climate change. Work is underway to develop state-of-the-science models of the Chesapeake airshed, watershed, and tidal waters to refine the 2035 climate risk in the 2025 Chesapeake Bay Assessment. Also, EPA and the Bay Program partnership are actively investigating best management practices to better protect the watershed and tidal Bay against the observed increased precipitation volumes and intensity brought about by climate change in urban and agricultural regions.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$114.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,954.0) This program change is an increase that supports projects to accelerate the restoration of the Chesapeake Bay.

Statutory Authority:

Clean Water Act, Section 117; Estuary Restoration Act of 2000; Chesapeake Bay Accountability and Recovery Act of 2014; Clean Air Act; Further Consolidated Appropriations Act, 2022, Pub. L. 117-103.

⁷¹ For more information, please see https://www.chesapeakebay.net/channel_files/40996/deij_statement_final_all_signatures.pdf

Geographic Program: Gulf of Mexico

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$5,335	\$20,000	\$22,524	\$2,524
Total Budget Authority	\$5,335	\$20,000	\$22,524	\$2,524
Total Workyears	15.4	14.7	14.7	0.0

Program Project Description:

The Gulf of Mexico is the ninth largest body of water in the world. The Mississippi River is the main river system which drains into the Gulf. The Mississippi River watershed captures drainage from 41 percent of the land area of the contiguous United States (includes parts of 31 states). This area equals approximately 1,467,182 square miles. Through coordinated public collaboration, EPA works to restore the Gulf, and ultimately improve the health of the coastal area benefiting approximately 16 million Americans.⁷²

The mission of the EPA's Gulf of Mexico Division (GMD) is to facilitate collaborative actions which protect, maintain, and restore the health and productivity of the Gulf of Mexico in ways consistent with the economic well-being of the region. The GMD competitively funds projects and uses interagency agreements and strategic partnerships to accomplish its mission. All GMD projects and partnership work are linked to one or more of the following performance measures: 1) improve and/or restore water quality; 2) protect, enhance, or restore coastal and upland habitats; 3) promote and support environmental education and outreach to inhabitants of the Gulf watershed; and 4) support the demonstration of programs, projects, and tools which strengthen community resilience.⁷³ The GMD provides significant leadership and coordination among state and local governments, the private sector, tribes, scientists, and citizens to align efforts that address the challenges facing the communities and ecosystems of the Gulf Coast.

The GMD is committed to voluntary, non-regulatory actions and solutions based on scientific data and technical information informed by work conducted with partners and the public.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

⁷² For more information please see: <https://www.census.gov/content/dam/Census/library/visualizations/2019/demo/coastline-america-print.pdf>.

⁷³ For more information please see: <https://www.epa.gov/gulfofmexico/2021-gulf-mexico-division-annual-report>.

In FY 2023, the Agency will continue supporting specific actions and solutions designed to improve the environmental and economic health of the Gulf of Mexico region through cooperative efforts and partnerships. Specifically, the Agency will address nutrient reduction on agricultural lands with a targeted focus on minority farmers and ranchers. Additionally, GMD will center its focus on sustainable agriculture and resilience in the farming community. EPA will continue to expand Science, Technology, Engineering, and Mathematics (STEM) experiential and workforce development to overburdened, underserved and vulnerable communities beleaguered by environmental injustices. Through green infrastructure practices such as artificial reefs, riparian buffers, prairies, and living shorelines, GMD will continue to aid climate change practices, including helping communities increase resilience. The GMD projects are competitively funded and coordinated with and complement ongoing Resource and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) and Natural Resource Damages Assessment (NRDA) activities related to the Deepwater Horizon oil spill. The GMD continues to seek broad participation and input from the diverse stakeholders who live, work, and recreate in the Gulf Coast region.

The GMD directly supports the following activities:

Environmental Education and Outreach

In FY 2023, the GMD will continue to promote the use of best available science and healthy environmental practices by developing programs, establishing partnerships, and competitively funding projects that increase environmental literacy. The GMD will enhance experiential learning opportunities for Gulf residents and visitors alike. The GMD will support practitioners of environmental education initiatives in using science-based data so Gulf residents can share a commonality of interest to preserve the Gulf of Mexico.

To ensure that environmental education and outreach efforts extend to overburdened and underserved populations, GMD will work with various sectors of government, community leaders, and academia on projects that improve conditions in communities with environmental justice concerns. Education and outreach are vital components and essential to accomplishing the Agency's mission to protect human health and the environment, to serve communities with environmental justice concerns, and to meet the GMD specific goals of promoting healthy and resilient coastal communities. All Gulf residents deserve the best information as it directly relates to their health, the economic vitality of their communities, and their overall quality of life.

Strengthen Community Resilience

Coastal and inland communities continuously face various natural and man-made challenges of living along the Gulf of Mexico coastline. These challenges include storm risk, land and habitat loss, depletion of natural resources, compromised water quality, and economic fluctuations. In FY 2023, the GMD will continue the robust partnerships and extensive community interactions to strengthen coastal and near-shore community preparedness. Through actions, activities, partnerships, and projects, communities throughout the Gulf will be more resilient, and thus better prepared for natural disasters or other situational emergencies. The Community Resilience Index

Tool provides municipalities with a method assessing vulnerabilities and creates a pathway for taking measures to improve conditions.

Improve Water Quality

The Clean Water Act provides authority and resources to protect and improve the water quality in the Gulf of Mexico and all waters of the United States. The GMD implements projects and works with its partners, such as the Hypoxia Task Force, to improve water and habitat quality throughout the Gulf of Mexico watershed. The GMD funds projects which improve water quality on a watershed basis. The Mobile Bay National Estuary Program (MBNEP) developed a strategy for a trash abatement initiative in the Three Mile Creek (TMC) Watershed. The total trash removed over the life of the project was over 5 tons, with 20 percent recycled. This success led to additional funding and greater ownership by the local municipality and the approach has been replicated in other areas through collaboration and technology transfer.

Enhance, Protect, or Restore Coastal Habitats

Managing critical ecosystems is widely recognized as a fundamental environmental challenge throughout the Gulf Coast region. The priority issues include, but are not limited to, sediment management, marsh/habitat loss due to subsidence, the continued reduction of freshwater in-flow, and climate change. For decades, the Gulf Coast has endured extensive natural and man-made damage to key habitats such as coastal wetlands, estuaries, barrier islands, upland habitats, seagrass vegetation, oyster reefs, coral reefs, and offshore habitats. In FY 2023, the GMD will continue working in close partnership to enhance coastal ecosystems, improve sediment movement/management, restore acreage where feasible and cost-effective, and reverse the effects of long-term habitat degradation.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$80.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,444.0) This program change is an increase of resources that support projects to accelerate the restoration of the Gulf of Mexico.

Statutory Authority:

Clean Water Act; Further Consolidated Appropriations Act, 2022, Pub. L. 117-103.

Geographic Program: Lake Champlain

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$14,996</i>	<i>\$15,000</i>	<i>\$20,000</i>	<i>\$5,000</i>
Total Budget Authority	\$14,996	\$15,000	\$20,000	\$5,000

Program Project Description:

The trans-boundary region of Lake Champlain is a resource of national significance and home to more than 600,000 people, about 35 percent of whom depend on the lake for drinking water. The 8,234-square mile basin includes areas in Vermont, New York, and the Province of Quebec. Lake Champlain draws millions of visitors annually. The Lake Champlain Basin Program (LCBP) supports implementation in Vermont and New York of a comprehensive pollution prevention, control, and restoration plan for protecting the future of the Lake Champlain Basin. Through the LCBP, EPA is addressing various threats to Lake Champlain's water quality, including phosphorus loadings, invasive species, and toxic substances.⁷⁴

The Program's goal is to achieve clean waters that will sustain diverse ecosystems, vibrant communities, and working landscapes. These ecosystems should provide clean water for drinking and recreation and support a habitat that is resilient to extreme events and free of aquatic invasive species.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

EPA's budget request will allow the Program to address high levels of phosphorus by implementing priority actions identified in the Opportunities for Action management plan to reduce phosphorus loads. The 2016 Vermont Total Maximum Daily Load (TMDL) for Phosphorus for Lake Champlain is central to the planning and implementation work within the Lake Champlain Basin to reduce phosphorus loads and meet the wasteload and load allocations specified in the TMDL. Phosphorus reductions from the New York portion of the Basin continue to be subject to the TMDL approved in 2002.

The LCBP also will increase efforts to better understand how to address harmful algal blooms (HABs) and prevent the introduction and spread of invasive species.

⁷⁴ For additional information see: <https://www.epa.gov/tmdl/lake-champlain-phosphorus-tmdl-commitment-clean-water> and <http://www.lcbp.org>.

In FY 2023, EPA will focus on the following activities:

- Ninety-three percent of the total phosphorus load to the lake is from stormwater or nonpoint source runoff, and seven percent is from wastewater treatment plant sources in Vermont, New York, and Quebec. EPA and its partners will continue to reduce phosphorous pollution from wastewater treatment facilities, stormwater runoff, and nonpoint sources to meet reductions specified in the Vermont and New York Total Maximum Daily Loads (TMDLs). Specifically, EPA will focus on:
 - Ensuring that facilities' permits remain consistent with the Clean Water Act, necessary upgrades to treatment facilities are completed, and the treatment optimization efforts continue throughout the Basin.
 - Implementing stormwater planning, design, and construction of green stormwater infrastructure at Vermont public schools and state universities, and implementation of best management practices on rural roads in both Vermont and New York, thereby increasing their resiliency to climate impacts. Addressing agricultural nonpoint sources including continued research to determine the efficiency of agricultural best management practices; evaluating farm practices to identify where practices are needed; and decommissioning former agricultural lands better suited for habitat and floodplain restoration efforts.
- The Lake Champlain Special Designation Act calls for the review and revision, as necessary, of the Program management plan at least once every five years. The LCBP expects to approve an updated management plan, in FY 2022 and will work under the direction of the Lake Champlain Steering Committee to begin implementing the plan in FY 2023.
- Funding in FY 2023 will support work on aquatic invasive species that harm the environment, economy, or human health, including aquatic plants, animals, and pathogens. EPA will continue to work with partners to understand the impact of any potential spread. The Agency also will continue to monitor invasive water chestnuts and fund efforts to reduce their density and distribution. Additionally, EPA and its partners will continue to implement the activities identified in the Great Lakes and Lake Champlain Invasive Species Program Report⁷⁵ submitted to Congress under requirements of the Vessel Incidental Discharge Act.
- The LCBP will continue to support the development of new ways to understand the high seasonal concentrations of Harmful Algal Blooms, report on their potential health impacts, and provide necessary information to the health departments of New York and Vermont to close beaches, protect drinking water intakes, or take other actions. In addition, the Program will investigate developing new approaches for urban and agricultural stormwater control.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

⁷⁵ For more information please visit: <https://www.epa.gov/greatlakes/great-lakes-and-lake-champlain-invasive-species-program-report>.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$5,000.0) This program change is an increase of resources that support projects to accelerate the restoration of Lake Champlain.

Statutory Authority:

Boundary Waters Treaty of 1909; Clean Water Act; Further Consolidated Appropriations Act, 2022, Pub. L. 117-103.

Geographic Program: Long Island Sound

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$30,361</i>	<i>\$30,400</i>	<i>\$40,002</i>	<i>\$9,602</i>
Total Budget Authority	\$30,361	\$30,400	\$40,002	\$9,602
Total Workyears	1.5	2.0	2.0	0.0

Program Project Description:

The Long Island Sound Program protects wildlife habitat and water quality in one of the most densely populated areas of the United States, with nearly nine million people living in the watershed. In total, the Long Island Sound watershed comprises more than 16 thousand square miles, including virtually the entire state of Connecticut, and portions of New York, Rhode Island, Massachusetts, Vermont, and New Hampshire. The Long Island Sound provides recreation for millions of people each year and provides a critical transportation corridor for goods and people. The Long Island Sound continues to provide feeding, breeding, nesting, and nursery areas for diverse animal and plant life. The ability of the Long Island Sound to support these uses is dependent on the quality of its waters, habitats, and living resources. The Long Island Sound watershed's natural capital provides between \$17 and \$37 billion in ecosystem goods and services every year.⁷⁶

Improving water quality and reducing nitrogen pollution are priorities of the Long Island Sound Program. The Program is making measurable differences in the region. Through State Revolving Fund and local investments of more than \$2.5 billion to improve wastewater treatment, the total nitrogen load to the Long Island Sound in 2020 decreased by 47 million pounds from 1990 levels, a 60 percent reduction. This and other investments have enabled the EPA-State partnership to attain the pollution reduction targets set in 2000.

The Program also is focused on habitat protection and restoration. The Program has restored 459 acres of coastal habitat between 2015-2021 achieving 130 percent of the five-year goal set in 2015. The Program is currently ahead of schedule in restoring one thousand acres by 2035.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

⁷⁶ For more information please see: Kocian, M., Fletcher, A., Schundler, G., Batker, D., Schwartz, A., Briceno, T. 2015. The Trillion Dollar Asset: The Economic Value of the Long Island Sound Basin. Earth Economics, Tacoma, WA.

In FY 2023 the Program will continue to oversee implementation of the Long Island Sound Study (LISS) Comprehensive Conservation and Management Plan (CCMP)⁷⁷ by coordinating the cleanup and restoration actions of the LISS Management Conference. The LISS CCMP is organized around four major themes: 1) Clean Waters and Healthy Watersheds; 2) Thriving Habitats and Abundant Wildlife; 3) Sustainable and Resilient Communities; and 4) Sound Science and Inclusive Management. Throughout the four themes, the CCMP incorporates key challenges and environmental priorities including resiliency to climate change, long-term sustainability, and environmental justice. The plan also set 20 quantitative ecosystem recovery targets to drive progress. In 2020, the LISS updated the CCMP with 136 implementation actions covering the period 2020-2024. In FY 2023, the EPA will focus on the following:

- Continue to reduce nitrogen pollution through implementing the Nitrogen Reduction Strategy. EPA will work cooperatively with Connecticut and New York to expand modeling and monitoring to develop numeric nitrogen targets that are protective of designated uses and set local nitrogen reduction targets where necessary.
- Coordinate priority watershed protection programs such as increasing streamside buffer zones as natural filters of pollution.
- Support community sustainability and resiliency through the new LISS Sustainable and Resilient Communities Work Group to help communities plan for climate change impacts while strengthening ecological health and protecting local economies.
- Integrate environmental justice considerations across program decision-making and implementation through the new LISS Environmental Justice Work Group.
- Conduct more targeted outreach and engagement efforts to understand community needs in areas with environmental justice concerns.
- Support an internal assessment to understand the diversity, equity, inclusion and justice training needs within the LISS partnership;
- Provide technical and financial assistance through an environmental justice subaward program.
- Continue exploring ways to support the participation of new and diverse partners in LISS programs and decision-making.
- Expand tracking and reporting of implementation efforts.
- Continue coordinated water quality monitoring.
- Coordinate the protection and restoration of critical coastal habitats to improve the productivity of tidal wetlands, inter-tidal zones, and other key habitats that have been adversely affected by unplanned development, overuse, land use-related pollution effects, and climate change (e.g., sea level rise, warming temperatures, changes in salinity and other ecological effects).
- Provide technical and financial assistance through the Long Island Sound Futures Fund.
- Conduct focused scientific research into the causes and effects of pollution on the Sound's living marine resources, ecosystems, water quality, and human uses to assist managers and public decision-makers in developing policies and strategies to address environmental, social, and human health impacts.

⁷⁷ For more information please visit: <https://longislandsoundstudy.net/2015/09/2015-comprehensive-conservation-and-management-plan/>.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$9.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$9,593.0) This program change is an increase of resources that support projects to accelerate the restoration of Long Island Sound.

Statutory Authority:

Clean Water Act § 119.

Geographic Program: Other

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$6,731</i>	<i>\$10,400</i>	<i>\$11,208</i>	<i>\$808</i>
Total Budget Authority	\$6,731	\$10,400	\$11,208	\$808
Total Workyears	4.8	5.7	5.7	0.0

Program Project Description:

EPA targets efforts to protect and restore many of the unique communities and ecosystems across the United States through the geographic programs. In order to protect these treasured resources impacted by environmental problems, the Agency develops and implements approaches to mitigate sources of pollution and cumulative risk. These approaches improve quality of the water resources in ecosystems and the health of residents that rely on them. While substantial progress has been made in all these programs, more work is required to further reduce toxins, lower nutrient loads into watersheds and water bodies, increase ecologically and economically important species, restore habitats, and protect human health.

The Northwest Forest Program

The Northwest Forest Program addresses water quality impairments in forested watersheds and works to improve the quality and quantity of surface water so that beneficial uses and drinking water/source water protection goals are met. Climate change is increasing the demands on the program due to the increase of catastrophic wildfires and resulting impacts to water quality and municipal drinking water.

The Northwest Forest Program supports monitoring of watershed conditions across 72 million acres of forest and rangelands in the Northwest. In Oregon and Washington, 40 to 90 percent of the land area within national forests supply drinking water to communities west of the Cascade Range crest. This program provides the data needed to help manage these drinking water resources. Funding allows EPA to provide critical support to the Aquatic Riparian Effectiveness Monitoring Program and the Pacfish/Infish Biological Opinion Effectiveness Monitoring Program. These regional scale watershed monitoring programs are essential to determining the effectiveness of riparian management in meeting aquatic/riparian habitat, ecosystem function, and water quality standards.

The Northwest Forest Program also helps EPA respond to tribal trust and treaty responsibilities. EPA staff are key to protection and restoration of watersheds and water quality important to tribes. EPA has tribal trust responsibilities in the Northwest for tribes reliant on salmon and shellfish.

The Lake Pontchartrain Basin Restoration Program

The purpose of this Program is to restore the ecological health of the Lake Pontchartrain Basin⁷⁸ by developing and funding restoration projects and related scientific and public education projects. Program activities include conducting water quality monitoring, educating basin residents on water protection and pollution prevention, conducting sewer system evaluations and surveys and developing designs and studies to determine infrastructure upgrades to prevent or reduce pollution.

The Basin comprises over 5 thousand square miles of land in 16 Louisiana parishes and 4 Mississippi counties. The land use of the Basin ranges from rural to urban and is the most densely populated region in Louisiana, including metropolitan New Orleans and Louisiana's capitol, Baton Rouge. The Basin provides a home and natural habitat to 2.1 million people and many plants, animals and fish. It is one of the largest estuarine systems in the United States, containing over 22 essential habitats. The Basin's topography ranges from rolling woodlands in the north to coastal marshes in the south, with the 630 square mile Lake Pontchartrain, the second largest saltwater lake in the United States, as its centerpiece.

Projects funded under this program maintain, protect, and restore the water quality and ecosystems of the Basin. These projects reduce the risk of pollution, increase protection of fisheries and drinking water sources and enhance recreational opportunities for the citizens of Louisiana.

Southeast New England Program (SNEP)

Southeast New England (from Westerly, Rhode Island, to Pleasant Bay, Massachusetts) faces environmental challenges that are both unique and highly representative of critical national problems, especially in coastal areas. Typical problems include rivers hydrologically disconnected by dams and restrictions, lost wetland functions, urbanization, and centuries-old infrastructure – all compounded by the increasing impacts of excess nutrients from wastewater, stormwater runoff, and atmospheric deposition. Excess nutrients have contributed to severe water quality problems including algal blooms, low dissolved oxygen conditions, fish kills, impaired benthic communities, and habitat loss (sea grass and salt marsh) in estuaries and near-coastal waters of this region and worldwide. The impacts of climate change, especially the likelihood of extreme weather events and increased precipitation, will further stress these systems in coming years, not only environmentally but also socially and economically. The program seeks to link environmental quality to economic opportunity and jobs by delivering local solutions in a regional and watershed context. Taking up and successfully addressing these issues will enable the Program to serve as a model for other areas.

SNEP serves as a hub to enable protection and restoration of the coastal watersheds of Southeast New England. Protecting these watersheds and the ecosystem services they provide will help sustain the region's communities and environmental assets into the future. SNEP draws upon networks of stakeholders and experts to seek out and support innovations in practices, technology, and policies that will enable better and more effective watershed protection and restoration. The

⁷⁸ For more information please visit: https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=33-USC-63955993-1352769591&term_occur=999&term_src=title:33:chapter:26:subchapter:I:section:1273.

goal is to create a sustainable path for change and to lead the next generation of environmental management by:

- Developing and investing in innovative, cost-effective restoration and protection practices, as well as new regulatory, economic, and technology approaches.
- Providing technical assistance to municipalities, tribes, and local organizations.
- Supporting local restoration efforts.
- Integrating delivery of programs to the public by our fellow agencies and partners.
- Focusing on ecosystem services.
- Improving technology transfer and delivery of restoration programs across the region.

Columbia River Program (CRBRP)

The Columbia River Basin (Basin) is one of North America's largest watersheds, covering approximately 260 thousand square miles, originating in British Columbia, Canada, with seven states including significant portions of Idaho, Montana, Oregon, and Washington. The Basin provides environmental, economic, cultural, and social benefits and is vital to many entities and industries in the Pacific Northwest, including tribal, recreational, and commercial fisheries; agriculture; forestry; recreation; and electric power generation.

Human activities have contributed to impaired water quality that impacts human health, and fish and wildlife species survival. Tribal fish consumers, other high fish consumers and subsistence fishers, are exposed to known toxic contaminants and increased human health risks. Beginning in 2004, EPA has made a priority commitment to reducing toxics in the Basin reflecting a responsibility to environmental justice for tribal people to protect human health and help restore and protect fish and wildlife populations. There are several endangered fish and wildlife species throughout the Basin. A major salmon restoration effort is underway that has expended millions of dollars to restore salmon throughout the Basin.

In 2016, Congress adopted the Columbia River Basin Restoration Act as Section 123 of the Clean Water Act (CWA), which directs EPA to lead a Basin-wide collaboration and competitive grant program to assess and reduce toxics in the Basin. Section 123 also directs EPA to: establish a Columbia River Basin Restoration Program (CRBRP) to assess trends in water quality; collect and assess data to identify possible causes of environmental problems; provide grants for projects for specific purposes; and establish a voluntary Columbia River Basin Restoration Working Group.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

Funding will be split amongst the Northwest Forest Program, Lake Pontchartrain Program, Southern New England Program and Columbia River Basin Program for restoration of the four geographic programs with an emphasis on initiatives that advance environmental justice and address the threats exacerbated by climate change.

Northwest Forest Program

In FY 2023, the Program will support the following activities:

- Wildfires impact monitoring and assessment of water quality in watersheds impacted by the catastrophic 2020 Labor Day fires in Oregon and anticipated future fire seasons in the Pacific Northwest.
- Aquatic and Riparian Effectiveness Monitoring (AREMP) of the Northwest Forest Plan and Bureau of Land Management (BLM) Western Oregon Resource Management Plan to help maintain and restore watersheds across 24 million acres of federal lands in western Washington and Oregon, and northern California.
- The PacFish/InFish Biological Opinion Effectiveness Monitoring Program to monitor stream and riparian habitats for both inland fish species and anadromous fish like salmon that rely on both the Pacific Ocean and freshwater rivers to ensure conservation strategies are working effectively to sustain fish populations.
- The Drinking Water Providers Partnership – an annual public-private funding opportunity for water providers and watershed restoration practitioners in Oregon and Washington to implement riparian or in-stream restoration actions to restore and protect the health of watersheds and drinking water.
- States' implementation of forestry non-point source programs and development of Total Maximum Daily Loads (TMDLs) and Best Management Practices for forestry.
- Development of Spatial Statistical Network models to evaluate impacts of forest practices and climate change on stream temperatures across entire watersheds. Further support for watershed management and development and implementation of TMDLs.
- Collaboration with partners and local water providers to address sediment and temperature impairments in forested watersheds.

Lake Pontchartrain

In FY 2023, the Program will help restore the ecological health of the Lake Pontchartrain Basin by:

- Continuing the implementation of the Lake Pontchartrain Basin Program Comprehensive Management Plan⁷⁹ and Comprehensive Habitat Management Plan, including implementation of restoration projects to address saltwater intrusion-wetland loss and sewage, agricultural, and stormwater runoff.
- Planning and design of consolidated wastewater treatment systems to support sustainable infrastructure.
- Conducting water quality monitoring outreach and public education projects.
- Protecting and restoring critical habitats and encouraging sustainable growth by providing information and guidance on habitat protection and green development techniques.

Southeast New England Program (SNEP)

In FY 2023, the Program will support technical assistance, grants, interagency agreements, and contracts to spur investment in regionally significant and/or landscape-scale restoration

⁷⁹ For more information please see: <https://sciencefourcoast.org/about-us/about-pc/management-plan/>.

opportunities, more fully integrate restoration actions, build local capacity, promote policy and technology innovation, encourage ecosystem (water quality and habitat) approaches, and enact the Southeast New England Program's new Five-Year Strategic Plan.⁸⁰ SNEP is tracking community engagement and is committed to trying to provide funding or technical assistance to 25 percent of regional municipalities (34 out of 133) and 50 percent of federally-recognized tribes (2 of 4) by the end of FY 2025. Specific activities include:

- Investing in on-the-ground environmental restoration/protection projects through the SNEP Watershed Implementation Grants (SWIG) Program.
- Building capacity of municipalities and other organizations to actively participate in implementing restoration projects and effectively managing their environmental programs through the SNEP Network.
- Promoting the development of next-generation watershed management tools.
- Collaborating among the Narragansett Bay and Buzzards Bay National Estuary Programs, the states of Rhode Island and Massachusetts, the Cape Cod Commission and other Cape organizations, municipalities, and key stakeholders to identify, test, promote, and implement approaches that can be replicated across Southeastern New England, with a focus on the nexus between habitat, nutrients, and stormwater and ecosystem and community resilience.
- Funding pilot projects and research to introduce innovations and practices that accelerate and guide ecosystem restoration and avoid or reduce nutrient impacts through interagency agreements with other federal agencies, including the U.S. Geological Survey and Department of Energy.
- Continuing the SNEP Pilot Watershed Initiative which seeks to concentrate and quantitatively evaluate the effectiveness of coordinated environmental restoration projects at a sub-watershed scale. Leveraging for efficiency and effectiveness by coordinating operations, resources, and funding principles among restoration partners, including federal and state agencies.
- Continuing development of a framework for a regional monitoring strategy that would ultimately provide data to inform a periodic report on the state of the SNEP region.

Columbia River Basin Program (CRBRP)

The EPA CRBRP's vision is to be a catalyst for broad toxics reduction work efforts and basin-wide collaboration to achieve a healthy ecosystem with significantly reduced toxic levels in fish, wildlife, and water to enable communities to access unimpaired watersheds with healthy fish and wildlife habitat. Key FY 2023 plans for EPA's CRBRP include:

- Continuing to manage the implementation of the CRBRP grant program awards to monitor and reduce toxics in the Basin.
- Competing a third round of CRBRP funding assistance utilizing FY 2023 appropriations.
- Providing technical assistance and communication products for the Columbia River Basin Restoration Working Group and the general public.

⁸⁰ For more information visit: <https://www.epa.gov/snep/snep-strategic-plan>

- Continuing to update the EPA Columbia River Basin website which serves as a source of technical references and other information on understanding and reducing toxics in the Basin.
- Integrating Environmental and Tribal Justice and Treaty Rights into the program.
- Supporting climate adaptation strategies and resilience as it relates to toxics reduction.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$807.0) This program change is an increase of resources that support projects to accelerate the restoration of the Geographic Program: Other areas.

Statutory Authority:

Clean Water Act.

Geographic Program: South Florida

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$1,369</i>	<i>\$6,000</i>	<i>\$7,202</i>	<i>\$1,202</i>
Total Budget Authority	\$1,369	\$6,000	\$7,202	\$1,202
Total Workyears	1.3	1.3	1.3	0.0

Program Project Description:

The South Florida Program ecosystem extends from Chain of Lakes near Orlando, Florida, south about 250 miles to Florida Bay. Nine million people, two Federally Recognized Native American Tribes: Seminole and Miccosukee, three National Parks, 15 National Wildlife Refuges, Big Cypress National Preserve, the Florida Keys National Marine Sanctuary, the Everglades and unique coastal resources: St. Lucie and Caloosahatchee Estuaries, Indian River Lagoon, Biscayne Bay, Florida Bay, Florida Keys, and coral reefs make up this unique and sensitive ecosystem. These ecosystems support a multi-billion-dollar economy through outdoor tourism, boating, recreational and commercial fishing, coral reef diving, and world-class beaches.

Challenges faced include: the long-term sustainability of sensitive natural areas, agriculture, and the expanding human population; balancing the region's often conflicting flood control, water supply and water quality needs; mitigating and adapting for extreme weather events and sea-level rise. EPA is committed to protecting and restoring these resources in South Florida.

EPA's South Florida Program coordinates restoration activities in South Florida, including ongoing restoration efforts in the Everglades and the Florida Keys where water quality and habitat are directly affected by land-based sources of pollution. EPA implements, coordinates, and facilitates activities through a variety of programs including: the Clean Water Act (CWA) Section 404 Wetlands Program; the Everglades Water Quality Restoration Strategies Program; the Everglades Regional Environmental Monitoring and Assessment Program; the Florida Keys National Marine Sanctuary Water Quality Protection Program; the Florida Keys National Marine Sanctuary Water Quality Monitoring Program; the Coral Reef Environmental Monitoring Program; the Benthic Habitat Monitoring Program; the Southeast Florida Coral Reef Initiative, as directed by the U.S. Coral Reef Task Force; and other programs.^{81,2} The South Florida Program furthers the goal of addressing water quality concerns in communities burdened with multiple sources of pollutions as well as builds resiliency against climate events in the region.

⁸¹ For more information please see: <http://www.epa.gov/aboutepa/about-epa-region-4-southeast>.

² For more information please see: <https://www.epa.gov/everglades>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

The South Florida Program supports efforts to protect and restore ecosystems impacted by environmental challenges. In FY 2023, EPA will focus on the Florida Keys Water Quality Protection Program, Florida Coral Reef Tract, Everglades Restoration, nutrient reduction to reduce harmful algal blooms, and CWA Section 404 implementation.

- The Florida Keys National Marine Sanctuary Water Quality Protection Program engages stakeholders across the breadth of the Florida Keys to review long-term monitoring projects of water quality and ecosystems related to water quality in the Keys. Data generated by EPA partners informs these programs which have documented periodic oceanographic events such as algal blooms, seagrass die-offs, and coral diseases, and have provided the foundational data for the development of nutrient numeric criteria. The long-term status and trend collected by the Coral Reef Environmental Monitoring Program is tracking the ongoing Stony Coral Tissue Loss Disease that continues to decimate over 20 reef building corals species of the Florida Reef Tract. To date, the South Florida Program has provided more than \$3.0 million to support coral research to hinder or halt the disease destroying corals reefs that are vital to Florida's eco-tourism industry and that serve as a natural mitigation barrier from storms and hurricanes.
- The Everglades Regional Environmental Monitoring and Assessment Program is an EPA conducted extensive assessment of the Everglades' health since 1993. Federal and state agencies, tribes, agriculture, the public, non-governmental organizations, and the National Academies of Sciences use the data to understand water quality and ecological conditions and to assess restoration progress. The data also help to explain the effectiveness of control programs for phosphorus and mercury.
- The Comprehensive Everglades Restoration Plan (CERP) is a \$20 billion federal-state restoration effort with over 60 projects that affect aquatic resources throughout south Florida. EPA will continue CWA and National Environmental Policy Act coordination with the US Army Corps of Engineers, Florida Department of Environmental Protection, South Florida Water Management District and Tribes for CERP planning and implementation.
- This program will continue implementation of the Florida Keys Wastewater Master Plan to provide Advanced Wastewater Treatment or Best Available Technology services to all homes and businesses in the Florida Keys through the EPA and state co-chaired FKNMS Water Quality Protection Program. The goal is to remove from service all non-functioning septic tanks, cesspits, and non-compliant wastewater facilities. More than 90 percent of Florida Keys homes and business are on advanced wastewater treatment systems and more than 30 thousand septic tanks have been eliminated.
- This program will continue support for restoration, monitoring, and modeling of seagrass communities within St. Lucie Estuary, the Caloosahatchee Estuary, Indian River Lagoon, Biscayne Bay, and Florida Keys to address of loss of seagrass meadows from phosphorus

enrichment and chlorophyll increases resulting in dying seagrass beds, increasing harmful algal blooms, fish kills, and manatee deaths.

- EPA will continue work with State and local governments, universities, and non-governmental organizations to implement on-the-ground and satellite water quality monitoring programs for the Florida Keys, Biscayne Bay, St. Lucie Estuary, Florida Bay, and Caloosahatchee Estuary. EPA has provided more than \$4 million to support water quality that includes water quality monitoring; harmful algal blooms detection, nutrient source identification and tracking; bacteria (enterococcus) tracking for healthy beaches; and submarine groundwater discharge to evaluate groundwater as a potential nutrient source.
- The FY 2023 budget request continues support for oysters, seagrass, mangroves, and sponge restoration efforts that reestablish and rehabilitate these natural systems; identify and map habitat areas for protection, restoration and management; and develop conservation / restoration plans for these resilient ecosystems that provide habitat, food, nutrient removal, water filtration, storm attenuation, carbon storage and shoreline stabilization in South Florida.
- EPA will develop an annual Request for Applications for FY 2023 funds and continue management of more than \$20 million in South Florida prior-year projects enhancing water quality, coral, and seagrass monitoring; restoring coral, seagrass and sponge ecosystems; developing models to identify pollutant sources; investigating emerging contaminants and researching water quality environments conducive to algal blooms.
- EPA will continue to work with the Florida Department of Environmental Protection (FDEP), local municipalities, and grantees to quantifying the impact of shallow wastewater effluent injection on groundwater nutrient fluxes to surface waters in the Florida Keys National Marine Sanctuary.
- This program will support CWA Section 404 implementation, including wetlands conservation, permitting, dredge and fill, and mitigation banking strategies through collaboration with U.S. Army Corps of Engineers and FDEP.
- EPA will continue to work with the State of Florida on Everglades Water Quality Restoration Strategies to address pollution. Part of this work will be tracking progress on the National Pollutant Discharge Elimination System permits and consent orders within the Everglades, including discharge limits for phosphorus and corrective actions that are consistent with state and federal law and federal court consent decree requirements.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$5.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$1,197.0) This program change is an increase of resources that support projects to accelerate the restoration of South Florida, including ongoing restoration efforts in the Everglades and the Florida Keys where water quality and habitat are directly affected by land-based sources of pollution.

Statutory Authority:

Florida Keys National Marine Sanctuary and Protection Act of 1990; National Marine Sanctuaries Program Amendments Act of 1992; Clean Water Act; Water Resources Development Act of 1996; Water Resources Development Act of 2000; National Environmental Policy Act.

Geographic Program: San Francisco Bay

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$6,718</i>	<i>\$8,922</i>	<i>\$12,004</i>	<i>\$3,082</i>
Total Budget Authority	\$6,718	\$8,922	\$12,004	\$3,082
Total Workyears	2.0	1.8	1.8	0.0

Program Project Description:

The San Francisco Bay-Delta Estuary has long been recognized as an estuary of national importance by EPA, other federal agencies, state partners, and local stakeholders. The Bay Area, home to over 7 million people, is one of the densest urban areas in the nation. While historically, San Francisco Bay had about 200 thousand acres of mudflats and tidal marshes, over 90 percent of that was lost to diking and filling for agriculture and urbanization. San Francisco Bay supports 500 species of wildlife, more than a quarter of which are either threatened or endangered. Investing in wetland restoration is pivotal to the bay's resiliency to rising sea levels and other hydrologic changes.

Since 2008, EPA has received an annual appropriation for a competitive grant program, the San Francisco Bay Water Quality Improvement Fund (SFBWQIF), to support projects that protect and restore San Francisco Bay and advance Blueprint/Comprehensive Conservation and Management Plan (CCMP) restoration goals. Funding for the SFBWQIF is specifically targeted for the watersheds and shoreline areas of the nine San Francisco Bay Area counties that drain into the Bay. Since 2008, the SFBWQIF has invested over \$72.4 million in 59 grant awards to restore over four thousand acres of wetlands around the Bay and minimize polluted runoff from entering the San Francisco Bay. SFBWQIF grants have leveraged \$183 million in funding from partners and represents a collaborative investment with local partners guided by the consensus-based Blueprint/CCMP. The FY 2023 request will support increased investments in projects around San Francisco Bay that are designed for resiliency considering a wide range of climate change impacts. The Program will increase focus on historically underserved and overburdened communities through continued outreach and capacity building with partner organizations.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will focus on the following activities:

- Issue a Request for Applications soliciting proposals to restore wetlands, restore water quality, and implement green development practices that use natural hydrologic processes to treat polluted runoff around San Francisco Bay.
- Issue a Request for Applications soliciting proposals to support underserved populations in the Bay Area to improve the habitat and water quality in their local communities and improve the ease in which underserved community voices are included in the planning for regional environmental projects.
- Continue to administer the SF Bay Water Quality Improvement Fund, consistent with the San Francisco Estuary Partnership's (SFEP) Comprehensive Conservation and Management Plan (CCMP).⁸²
- Continue to build the resilience of San Francisco Bay ecosystems, shorelines and communities to climate change and sea level rise.
- Continue to use EPA grants to fund climate resilient projects and improve access to funds for underserved communities.
- Provide funding and technical support to implement a new regional monitoring program for San Francisco Bay wetlands. The Wetlands Regional Monitoring Program will provide baseline data and include the following: a) Monitoring site network; b) Open data sharing platform; c) Comprehensive science framework.
- Continue technical support for the SF Bay Regional Monitoring Program (RMP), a 28-year-old partnership between regulatory agencies and the regulated community to provide a long-term data set and scientific foundation to make water quality management decisions. The RMP monitors water quality, sediment quality and bioaccumulation of priority pollutants in fish, bivalves and birds. To improve monitoring measurements or the interpretation of data, the RMP also regularly funds special studies.
- Seek to leverage other sources of funding such as the Clean Water State Revolving Fund and Federal Emergency Management Agency's pre-hazard mitigation funds in support of priority CCMP projects such as the San Francisco Estuary Partnership working with municipal partners on the Hayward Shoreline horizontal levee pilot project and the related "First Mile" project.
- Continue EPA's participation in the Bay Restoration Regulatory Integration Team (BRRIT), a five-year, multi-agency pilot effort to facilitate the complex permitting of restoration projects. The goal of BRRIT is for agencies with permitting jurisdiction over multi-benefit habitat restoration projects to improve the permitting process. BRRIT agencies use dedicated staff time to conduct early design review, provide written guidance and comments, identify Agency requirements that need to be met, and resolve regulatory issues early in the project planning and design phase. This permitting effort enables the accelerated implementation of our funded restoration projects.
- Continue to increase the reuse of dredged material for wetlands restoration, which is critical in preparing and responding to sea level rise in San Francisco Bay.
- Continue to partner with the academic and science organizations supporting the San Francisco Bay buoy array, partially funded by EPA, to monitor low-pH and low-oxygen events due to

⁸²Please see the SFEP Comprehensive Conservation and Management Plan (2016) at <https://www.sfestuary.org/wp-content/uploads/2017/08/CCMP-v26a-all-pages-web.pdf>.

intrusion of upwelled water from the ocean and assessing its impacts, as well as watershed nutrient inputs.

The San Francisco Estuary restoration community is working rapidly to meet its goal of restoring 100,000 acres of wetlands that can provide flood protection, recreation, water quality improvement, and habitat for surrounding communities. Since 2008, approximately \$32 million of the SFBWQIF funds have been provided through grants to restore wetland habitat.

Key actions include continued partnerships with state and federal agencies to implement and track fourteen TMDLs,⁸³ provide technical assistance when asked by Delta stakeholders to sustain the Delta Regional Monitoring Program (RMP), and work towards continued integration of long-term data sets in the Bay and Delta, such as the Bay Regional Monitoring Program for water quality (RMP) and the Interagency Ecological Program.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (-\$2.0) This change to fixed and other costs is a decrease due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$3,084.0) This program change is an increase of resources that support projects to accelerate the restoration of the San Francisco Bay.

Statutory Authority:

Clean Water Act, Further Consolidated Appropriations Act, 2022, Pub. L. 117-103.

⁸³ For more information, please see the SF Bay Delta TMDL Progress Assessment at <http://www2.epa.gov/sfbay-delta/sf-bay-delta-tmdl-progress-assessment>.

Geographic Program: Puget Sound

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$32,946</i>	<i>\$33,750</i>	<i>\$35,016</i>	<i>\$1,266</i>
Total Budget Authority	\$32,946	\$33,750	\$35,016	\$1,266
Total Workyears	6.2	7.0	7.0	0.0

Program Project Description:

Puget Sound is the southern portion of the international Salish Sea and is the largest estuary by water volume in the United States (U.S.). The Sound is an economic and cultural engine for the region's more than 4.7 million people, including nineteen federally recognized tribes. Nearly 71 percent of all jobs and 77 percent of total income in Washington State are found in the Puget Sound Basin. By 2040, the population is projected to grow to seven million, the equivalent of adding approximately four cities the size of Seattle to the watershed.

Puget Sound's beneficial uses are significant. In 2017, the value of Puget Sound commercial fishing (finfish and shellfish) was \$114 million, and the Gross Domestic Product from Puget Sound-related tourism and recreation activities was \$4.7 billion. Puget Sound's shellfish industry is considered the Nation's most valuable and is an important source of family wage jobs in economically challenged rural communities.

Development and land use conversion have adversely impacted the beneficial uses of Puget Sound's waters. For example, pollution and agricultural runoff reduce the safe harvest and consumption of shellfish across 143 thousand acres of shellfish beds and cause the closure of popular swimming beaches and recreational sites annually. Southern resident killer whales and 59 populations of Chinook salmon, steelhead, and bull trout are listed under the Endangered Species Act. Tribal nations also are unable to sustain their culture and way of life.

A healthy and functioning Puget Sound benefits all who live, visit, or recreate there, or have a connection to the region. A properly functioning ecosystem provides residents with food, water, and raw materials; regulates and moderates harmful elements; and provides cultural, spiritual, and recreational experiences.

Federal support of Puget Sound recovery comes from many programs, most of which are administered by EPA, the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture, U.S. Department of Interior, and the U.S. Army Corps of Engineers.

Since 2010, Congress has appropriated over \$400 million using Clean Water Act Section 320 authority for Puget Sound. Under Section 320, EPA has provided the National Estuary Program and Geographic Program funding and support to help communities make on-the-ground improvements for clean and safe water, protect and restore habitat, allow for thriving species and a vibrant quality of life for all, while supporting local jobs.

EPA's work with the Puget Sound Partnership, state agencies, tribes, and other partners has supported important gains in recovery. Examples include:

- Comprehensive regional plans to restore the Sound;
- More than \$1 billion of non-federal dollars leveraged for recovery;
- Partnerships with 19 federally recognized tribes;
- Transboundary collaboration with Canada;
- Scientific gains on toxic effects of urban stormwater;
- Development and use of decision-making tools to integrate Environmental Justice and Climate Adaptation plans and projects;
- Since 2007, a net increase of harvestable shellfish beds;
- Over 41 thousand acres of habitat protected and/or restored (cumulative from 2006); and
- More than six thousand acres of shellfish harvest bed upgraded (cumulative from 2007).

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

Key FY 2023 activities for EPA's Puget Sound Program include:

- EPA will fund assistance agreements with the 19 federally recognized tribes in Puget Sound, three Tribal consortia, and the Northwest Indian Fisheries Commission. EPA proposes to provide funding to tribes for both capacity building and implementing priority tribal projects in the Puget Sound basin.
- EPA will fund over 8 million in tribal projects to support key local watershed science and monitoring; local partnerships in restoration projects to support habitat and water quality; enhancement of ongoing programs and policies for recovery.
- EPA is a co-chair the overall federal effort to address Tribal Treaty Rights at Risk consistent with the roles assigned by the Council on Environmental Quality. This is an essential role for EPA and our federal leaders in the region to meaningfully engage and develop actions with our Puget Sound tribes to address their important treaty rights.
- The Program will build on 20 years of international cooperation with Canada implementing the Canada-U.S. Cooperation in the Salish Sea: 2021-2024 Action Plan.⁸⁴ The Program will participate in a series of workshops on topics of shared interest in our transboundary work including joint efforts for Southern Resident Killer Whales, science collaboration and enhancing our transboundary governance opportunities.
- The FY 2023 budget request will help fulfill National Estuary Program responsibilities, including support for the implementation of the Comprehensive Conservation and Management Plan (CCMP) for recovering Puget Sound (the Action Agenda). The Program

⁸⁴ For more information please see: <https://www.epa.gov/puget-sound/actions-plans-us-canada-cooperation-salish-sea>.

will be receiving, reviewing, and approving the next CCMP in FY 2023 that will set up our next four years of collaborative implementation of recovery efforts in Puget Sound.

- The Program will integrate climate adaptation and environmental justice while supporting local jobs. The Program is building climate resiliency into the actions and projects funded with Puget Sound assistance agreements for habitat, shellfish and water quality, which presents the opportunity to grow and integrate climate justice in all of our program areas with federal, state, tribal and local partners.
- The Program will be managing and awarding up to \$100 million in projects from Puget Sound funding over the next five years consistent with the EPA's 2021 Strategic Initiative Lead Funding Model.⁸⁵ The Program will fund over \$15 million in shellfish, habitat and stormwater projects and programs.
- The Program will continue to fund and coordinate cutting-edge science in the Salish Sea with funding over \$6 million in science projects from Puget Sound funding and programs with federal, state, tribal and academic partners.
- The Program will enhance Federal Task Force leadership, including leadership and implementation of the FY 2022-2026 Action Plan. This leverages hundreds of millions of federal investments in Puget Sound and provides alignment of program and policies for recovery.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$58.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$1,208.0) This program change is an increase of resources that supports federal, state, tribal, and local efforts to protect and restore the Puget Sound.

Statutory Authority:

Clean Water Act. Consolidated Appropriations Act, 2022, Pub. L. 117-103.

⁸⁵ For more information please visit: https://snohomishcountywa.gov/DocumentCenter/View/87563/FY21-EPA-Funding-Guidance-to-SILs_FINAL.

Great Lakes Restoration

Program Area: Geographic Programs

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$306,380</i>	<i>\$330,000</i>	<i>\$340,111</i>	<i>\$10,111</i>
Total Budget Authority	\$306,380	\$330,000	\$340,111	\$10,111
Total Workyears	71.6	68.5	68.5	0.0

Program Project Description:

The Great Lakes are the largest system of surface freshwater on Earth, containing twenty percent of the world's surface freshwater and 95 percent of the United States' (U.S.) surface freshwater. The watershed includes eight U.S. states, two Canadian provinces, and 35 tribes.

Through a coordinated interagency process led by EPA, the implementation of the Great Lakes Restoration Initiative (GLRI) is helping to restore the Great Lakes ecosystem. This restoration effort provides environmental and public health benefits to the region's thirty million Americans who rely on the Great Lakes for drinking water, recreation, and fishing. The restoration and protection of the Great Lakes also fuels local and regional economies and community revitalization efforts across the basin.

This interagency collaboration accelerates progress, promotes leveraging, avoids potential duplication of effort, and saves money. In accordance with the Clean Water Act (CWA), EPA and its partners are accomplishing this restoration through the implementation of a five-year GLRI Action Plan. The implementation of the GLRI Action Plan III, covering FY 2020 through FY 2024, began in October 2019.

EPA and its partners have achieved significant results since the GLRI started in 2010⁸⁶, including:

- Five Areas of Concerns (AOCs) delisted, including the Ashtabula River AOC in FY 2021⁸⁷;
- Eleven other AOCs have had the cleanup and restoration actions necessary for delisting completed;
- 97 Beneficial Use Impairments (BUIs) at 28 AOCs in the eight Great Lakes states have been removed, more than nine times the total number of BUIs removed in the preceding 22 years;
- Over 4.3 million cubic yards of contaminated sediment have been remediated;

⁸⁶ For more information, please see <https://www.epa.gov/greatlakes>.

⁸⁷ Prior to GLRI, only one Great Lakes AOC was delisted.

- Over 200 thousand acres on which invasive species control activities have been implemented;
- Self-sustaining populations of Silver and Bighead carp have been kept out of the Great Lakes;
- Over 10 million pounds of invasive carp have been removed from the Illinois River, reducing the potential for this invasive species to invade the Great Lakes;
- Loadings of over 2 million pounds of phosphorus were reduced through implementation of conservation practices (phosphorus is a major driver of harmful algal blooms in Great Lakes priority watersheds);
- More than 460 thousand acres of habitat have been protected, restored, or enhanced; and
- Over 575 thousand youths have benefited from Great Lakes-based education and stewardship projects.

Under the GLRI, funds are first appropriated to EPA. After annual evaluation and prioritization consistent with the GLRI Action Plan,⁸⁸ EPA and its partner agencies collaboratively identify projects and programs that will best advance progress under GLRI. EPA then provides a substantial portion of the appropriated funds to its partner federal agencies to implement GLRI projects and programs in partnership with EPA, states, and tribes. EPA and its partner federal agencies will directly implement projects and fund projects performed by other entities such as states, tribes, municipalities, counties, universities, and nongovernmental organizations. GLRI funding can supplement each Agency's base funding.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the GLRI will continue to support programs and projects which target the most significant environmental problems in the Great Lakes. Emphasis will continue to be placed on 1) cleaning up and delisting AOCs which has led to community revitalization, which is especially important in environmental justice communities and opportunity zones; 2) reducing phosphorus contributions that contribute to harmful algal blooms and other water quality impairments; and 3) invasive species prevention. GLRI Action Plan III targets GLRI restoration within the focus areas, objectives, and performance goals described below.

Toxic Substances and Areas of Concern Objectives:

- *Remediate, restore, and delist AOCs.* EPA, U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), United States Geological Survey (USGS), National Oceanic and Atmospheric Administration (NOAA), and other GLRI partners will continue accelerating the pace of U.S. BUI removals. EPA and its federal partners will work with and fund stakeholders to implement management actions necessary to remove the BUIs (indicators of poor environmental health) that will ultimately lead to the delisting of the remaining U.S. AOCs. Agencies target collective efforts under the GLRI to maximize removal of BUIs and

⁸⁸ For more information please see <https://www.glri.us/action-plan>.

delisting of AOCs. Agencies will support BUI removal through sediment remediation under the Great Lakes Legacy Act (part of the GLRI) and other restoration activities. FY 2023 targets are:

- One AOC (20 AOCs cumulative since 1987) where all management actions necessary for delisting have been implemented;
 - Nine BUIs (118 BUIs cumulative since 1987) removed in AOCs; and
 - Two AOCs (28 AOCs cumulative since 1987 – more than 80 percent of the 31 total AOCs) with complete and approved lists of management actions necessary for delisting.
- *Share information on the risks and benefits of consuming Great Lakes fish, wildlife, and harvested plant resources with the people who consume them.* Federal agencies and their state and tribal partners will continue to help the public make informed decisions about healthy options for safe fish consumption. Expansion of successful pilot programs will increase the availability and accessibility of safe fish consumption guidelines to overburdened and vulnerable communities that consume Great Lakes fish. Additional emphasis will be placed on the safe consumption of wildlife and harvested plant resources.
 - *Increase knowledge about “Chemicals of Mutual Concern”, as identified pursuant to the Great Lakes Water Quality Agreement Annex,⁸⁹ 3 and other priority chemicals that have negatively impacted, or have the potential to negatively impact, the ecological or public health of the Great Lakes.* Federal agencies will coordinate with appropriate state and tribal partners to begin to fill critical monitoring and data gaps for priority chemicals in the Great Lakes. Monitoring data from this process will provide information on the magnitude and extent of these chemicals in the Great Lakes and help in the evaluation of associated ecological, economic, and recreational consequences.

Invasive Species Objectives:

- *Prevent introductions of new invasive species.* Federal agencies and their partners will continue to prevent new invasive species (including invasive carp) from establishing self-sustaining populations in the Great Lakes ecosystem. Federal agencies and their partners will work to increase the effectiveness of existing surveillance programs by increasing detection abilities. Federal agencies will continue to support state and tribal efforts to develop and implement Aquatic Nuisance Species Management Plans which will be used for annual “readiness exercises” and actual responses to new detections of invasive species. GLRI partners will be able to use risk assessments in combination with updated “least wanted” lists to focus prevention activities. Increasing the ability and frequency of Great Lakes states to quickly address new invasions or range expansion of existing invasive species will be a key GLRI strategy. In FY 2023, the goal is to conduct eight rapid responses or exercises.
- *Control established invasive species.* Federal agencies and their partners will bring an enhanced focus to the quality of acreage to be restored as they restore sites degraded by aquatic,

⁸⁹ For more information please visit: <https://www.epa.gov/glwqa/glwqa-annexes>.

wetland, and terrestrial invasive species. Federal agencies will implement control projects in national forests, parks, and wildlife refuges, and will partner with states and neighboring communities to promote larger scale protection and restoration through applicable control programs. GLRI funding will help the Great Lakes Sea Lamprey Control Program to locate and address strategic barriers while also advancing new control technologies. In FY 2023, the target is to control invasive species on six thousand acres.

- *Develop invasive species control technologies and refine management techniques.* Federal agencies and their partners will continue to develop and enhance technologies to control non-native phragmites, sea lamprey, and red swamp crayfish so that on-the-ground land managers can field test these new approaches. Federal agencies also will develop and enhance invasive species “collaboratives” to support rapid responses and to communicate the latest control and management techniques for non-native species such as Hydrilla, Dreissenidae mussels, hemlock wooly adelgid, and emerald ash borer. Federal agencies and their partners will support a Great Lakes telemetry network to track aquatic invasive species movements (e.g., grass carp) and refine rapid response actions.

Nonpoint Source Pollution Impacts on Nearshore Health Objectives:

- *Reduce nutrient loads from agricultural watersheds.* EPA, federal agencies, and their partners will continue working on farms and in streams to reduce nutrient loads from agricultural watersheds, emphasizing utilization of conservation systems and work in priority watersheds, particularly the Lower Fox River (WI), Saginaw River (MI), Maumee River (OH), and Genesee River (NY). This work will reduce the most significant loadings from nutrient runoff. Federal agencies and their partners will improve the effectiveness of existing programs, encourage the adoption of technologies and performance-based approaches to reduce runoff and soil losses, expand demonstration farm networks to increase adoption of nutrient management practices, promote practices for slowing down and filtering stormwater runoff, and emphasize long-term and sustainable nutrient reductions. EPA and its federal partners will target resources and activities at locations that are the most significant cause of harmful algal blooms. In FY 2023, the targets are to:
 - Reduce 300 thousand pounds (2.5 million pounds cumulative since 2010) of phosphorus from conservation practice implementation throughout Great Lakes watersheds; and
 - 170 thousand acres (2.685 million acres cumulative since 2010) receiving technical or financial assistance on nutrient management in priority watersheds.
- *Reduce untreated stormwater runoff.* EPA and its federal partners will continue to accelerate implementation of green infrastructure projects to reduce the impacts of polluted urban runoff on nearshore water quality at beaches and in other coastal areas. These projects will capture or slow the flow of untreated runoff and filter out sediment, nutrients, toxic contaminants, pathogens, and other pollutants prior to entering Great Lakes tributaries and nearshore waters. Federal agencies and their partners also will continue to support watershed management projects that slow and intercept runoff, including installation of tributary buffers, restoration of coastal wetlands, and re-vegetation and re-forestation of areas near Great Lakes coasts and tributaries. In FY 2023, the targets are:

- Capture or treat 50 million gallons (500 million gallons cumulative since 2015) of untreated stormwater runoff captured or treated; and
 - Restore or protect seven miles (54 miles cumulative since 2015) of Great Lakes shoreline and riparian corridors restored or protected.
- *Improve effectiveness of nonpoint source control and refine management efforts.* EPA and its federal partners will continue to adaptively manage to maximize nonpoint source control efforts. Strategies include conducting edge-of-field monitoring studies in agricultural priority watersheds to test the effectiveness of innovative practices such as bioreactors; application of previously supported tools and lessons learned to optimize project results; and development of new strategies such as nutrient recovery and manure transformation technologies. In FY 2023, the targets are:
 - Conduct 30 nutrient monitoring and assessment activities; and
 - Develop or evaluate ten nutrient or stormwater runoff reduction practices or tools.

Habitats and Species Objectives:

- *Protect and restore communities of native aquatic and terrestrial species important to the Great Lakes.* EPA and its federal partners will implement protection, restoration, and enhancement projects focused on open water, nearshore, connecting channels, coastal wetland, and other habitats to protect and restore native species. They will build upon and shore-up past investments while advancing protection and restoration in new areas important to targeted species. Projects will be largely based on priorities in regional scale conservation strategies and will include:
 - Protecting, restoring, and enhancing coastal wetlands;
 - Removing dams and replacing culverts to create fish habitat and reconnect migratory species to Great Lakes tributaries;
 - Restoring habitat necessary to sustain populations of migratory native species; and
 - Protecting, restoring, and managing existing wetlands and high quality upland areas to sustain diverse, complex, and interconnected habitats for species reproduction, growth, and seasonal refuge.
- In FY 2023, the targets are:
- Restore, protect, or enhance 12 thousand acres of coastal wetland, nearshore, and other habitats; and
 - Increase connectivity between rivers, streams, and lakes by 200 miles (6,300 miles cumulative since 2010) providing passage for aquatic species.
- *Increase resiliency of species through comprehensive approaches that complement on-the-ground habitat restoration and protection.* EPA and its federal partners will maintain, restore, and enhance the habitats of native fish and wildlife species to increase the resiliency and overall health of these species. Agencies will maximize habitat improvements (coastal wetlands in particular) for aquatic and terrestrial species through collaborative conservation and monitoring at local and regional scales. Project benefits are expected to include avoiding species extinction, identification of key habitats and of limiting factors to species recovery and increasing or protecting population levels. GLRI agencies and their partners will continue to

support protection of native species that have cultural, subsistence, and economic value. In FY 2023, the target is to complete actions to significantly protect or promote recovery of populations of two species (six species cumulative since 2018).

Foundations for Future Restoration Actions Objectives:

- *Educate the next generation about the Great Lakes ecosystem.* EPA and its federal partners will promote Great Lakes-based environmental education and stewardship for students and other interested community members (e.g., courses at parks, nature centers, on board vessels, museums, and zoos). With an emphasis on educating kindergarten through grade 12 youth, GLRI partners will support experience-based learning opportunities. GLRI agencies and their partners also will continue to develop Great Lakes-literate educators to maximize the number of youths impacted using principles and concepts in the Great Lakes Literacy curriculum. These activities will support the overall goal of impacting youth to foster Great Lakes stewardship, promote conservation, and expose and prepare under-represented youth for higher education opportunities in natural resource management.
- *Conduct comprehensive science programs and projects.* EPA and its federal partners will continue to investigate the most significant ecological problems in the Great Lakes. Great Lakes monitoring will include coastal wetlands, water quality, and the lower food web in the offshore waters; nutrient cycling and harmful algal blooms in priority areas; and contaminants in Great Lakes fish, sediments, and air. Federal agencies and their partners will identify and address science priorities to support implementation of the GLRI and the Great Lakes Water Quality Agreement. They will continue to: develop new tools for monitoring and forecasting; measure project effectiveness; prioritize management activities; and consider environmental and health outcomes.

GLRI Funding Allocations:

EPA leads the cooperative process to determine funding allocations for programs and projects of the GLRI agencies. Under the CWA Section 118, EPA provides the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a yearly detailed description of the progress of the GLRI and amounts transferred to participating federal departments and agencies.

Summary of FY 2016 - 2023 Allocations* by Focus Area
(Dollars in Thousands)

Focus Area	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Toxic Substances and AOC	\$106,600	\$107,500	\$105,600	\$107,400	\$116,900	\$121,400	\$121,400	\$138,600
Invasive Species	\$56,400	\$62,200	\$56,700	\$57,000	\$62,900	\$65,700	\$65,700	\$60,700
Nonpoint Source Pollution Impacts on Nearshore Health	\$51,700	\$47,900	\$50,600	\$51,200	\$51,000	\$53,000	\$53,000	\$52,411
Habitat and Species	\$54,200	\$49,500	\$52,400	\$51,400	\$54,500	\$56,500	\$56,500	\$52,600
Foundations for Future Restoration Actions	\$31,100	\$32,900	\$34,700	\$33,000	\$34,700	\$33,400	\$33,400	\$35,800

TOTAL	\$300,000	\$300,000	\$300,000	\$300,000	\$320,000	\$330,000	\$330,000	\$340,111
* Final allocations for FY 2016 – FY 2019. FY 2020 and FY 2021 allocations are based on budgets approved by Regional Working Group agencies. Allocations for FY 2022 and FY 2023 are subject to approval by Regional Working Group agencies. FY 2022 numbers reflect the Annualized Continuing Resolution amount.								

Summary of FY 2016 - 2023 Allocations* by Agency
(Dollars in Thousands)

Agency	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
DHS-USCG	\$1,274	\$1,580	\$500	\$1,661	\$1,250	\$1,300	\$1,300	TBD
DOC-NOAA	\$30,740	\$12,027	\$24,629	\$29,405	\$28,163	\$16,800	\$16,800	TBD
DOD-USACE	\$33,369	\$55,940	\$43,559	\$37,387	\$30,665	\$48,128	\$48,128	TBD
DOI-BIA	\$6,203	\$10,904	\$11,617	\$9,842	\$15,840	\$15,765	\$15,765	TBD
DOI-NPS	\$3,799	\$4,379	\$3,940	\$3,822	\$3,794	\$4,993	\$4,993	TBD
DOI-USFWS	\$48,118	\$41,794	\$52,902	\$47,272	\$51,901	\$57,586	\$57,586	TBD
DOI-USGS	\$22,960	\$26,817	\$25,724	\$21,603	\$19,780	\$17,867	\$17,867	TBD
DOT-MARAD	\$2,106	\$800	\$675	\$803	\$5,500	\$8,000	\$8,000	TBD
HHS-ATSDR/CDC	\$1,692	\$593	\$590	\$0	\$0	\$0	\$0	TBD
USDA-APHIS	\$1,089	\$1,262	\$1,176	\$1,312	\$1,378	\$1,459	\$1,459	TBD
USDA-NRCS	\$19,062	\$22,072	\$25,096	\$20,697	\$22,239	\$24,374	\$24,374	TBD
USDA-USFS	\$10,822	\$11,355	\$10,153	\$11,646	\$9,921	\$12,464	\$12,464	TBD
Multi-agency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	TBD
IA Totals:	\$181,234	\$189,522	\$200,560	\$185,448	\$190,432	\$208,736	\$208,736	TBD
EPA and Misc IAs	\$118,766	\$110,478	\$99,440	\$114,552	\$129,568	\$121,264	\$121,264	TBD
Totals:	\$300,000	\$300,000	\$300,000	\$300,000	\$320,000	\$330,000	\$330,000	\$340,111

* Final allocations for FY 2016 – FY 2019. FY 2020 and FY 2021 allocations are based on budgets approved by Regional Working Group agencies. Allocations for FY 2022 and FY 2023 do not include adjustments that may be made in light of Bipartisan Infrastructure Law funding and are subject to approval by Regional Working Group agencies.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$304.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$9,807.0) This program change is an increase of resources that supports projects to accelerate the restoration of the Great Lakes.

Statutory Authority:

Clean Water Act Section 118.

Homeland Security

Homeland Security: Communication and Information

Program Area: Homeland Security

Goal: Safeguard and Revitalize Communities

Objective(s): Prepare for and Respond to Environmental Emergencies

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$3,893	\$4,145	\$4,650	\$505
Total Budget Authority	\$3,893	\$4,145	\$4,650	\$505
Total Workyears	11.7	13.3	14.3	1.0

Program Project Description:

There has been an evolution of the term and mission of national and homeland security since 9/11. National security is now widely understood to include non-military dimensions, such as climate and environmental security, economic security, energy security, and cybersecurity. Systematic preparation is essential for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, climate change, pandemics, catastrophic natural disasters, and cyberattacks. The White House, Congress, and the Department of Homeland Security (DHS) have defined responsibilities for EPA in several areas, including water critical infrastructure protection and response to chemical, biological, radiological, and nuclear events, through a series of statutes, presidential directives, and national plans. EPA's Homeland Security: Communication and Information Program is comprised of the Office of Homeland Security (OHS), which supports the Agency's coordination and communication activities related to national security and homeland security and the Agency's Enterprise Security Operations Center (SOC), which is responsible for the centralized, integrated, and coordinated cybersecurity prevention, detection, response, and supporting recovery capability for EPA networks.

OHS provides technical, policy, and intelligence advice to senior agency leadership related to national and homeland security. OHS coordinates the Agency's intelligence activities including EPA's engagement with the White House, National Security Council (NSC), and other federal departments and agencies on the development of new national and homeland security policy and requirements. OHS also ensures that the NSC and other lead federal entities understand the impacts of new national security initiatives and policies on existing EPA programs. OHS maintains intelligence operations and analyses capabilities focusing on EPA's equities, including the protection of critical infrastructure, specifically the water sector, climate change and security issues, and biodefense and global health security issues. OHS serves as the Federal Intelligence Coordinating Office (FICO) for EPA and coordinates with the Intelligence Community (IC) in support of policy development and consequence management efforts. OHS also focuses on coordination and integration of chemical, biological, and radiological preparedness and response programs as they relate to the protection of air and water quality and the prevention of land contamination through external engagement with federal departments and agencies and internal coordination with EPA program offices with homeland security responsibilities. OHS coordinates

with regional, state, and local Fusion Centers and Joint Terrorism Task Forces to focus on integrating EPA regional offices with the information sharing environment and DHS' intelligence sharing network. OHS also advances implementation of the following programs: EPA Insider Threat, Suspicious Activity Reporting, National Operations Security (OPSEC), Counterintelligence, and Committee on Foreign Investment in the United States.

In addition, OHS works closely with EPA's Water Program to coordinate and integrate water security efforts internally and externally with stakeholders regarding physical threats and contamination and cyber threats to operations. EPA serves as the Sector Risk Management Agency (SRMA) for the water sector. The October 2020 *DHS Homeland Threat Assessment* and the 2021 *Annual Threat Assessment of the U.S. Intelligence Community (IC)* (April 2021)⁹⁰ indicated that cyber threats from nation states and non-nation states remain an acute growing problem threatening U.S. critical infrastructure. Cyberattacks across critical infrastructure sectors are rapidly increasing in volume and sophistication, impacting both information technology (IT) and operational technology (OT) systems in the water sector.

EPA's SOC provides a centralized, integrated, and coordinated cybersecurity incident response capability that defends against unauthorized activity within computer networks, by preventing, detecting, monitoring, analyzing, and responding to suspicious or malicious activity through its Computer Security Incident Response Capability (CSIRC). The SOC and CSIRC also provide: situational and threat awareness; cyber network defense infrastructure; cybersecurity tool engineering and support; vulnerability and risk assessments; and threat intelligence processing and threat hunting capabilities. The SOC leverages endpoint detection and response and other capabilities to perform its mission. The SOC maintains communications with DHS' Liaison Officers to respond to alerts that have potential national security impact.

National and homeland security information technology efforts are closely coordinated with the agencywide information security and infrastructure activities, which are managed by EPA's Information Security and IT/Data Management programs. These IT support programs also enable contact among localities, EPA program and regional offices, and laboratories in emergency situations.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.3, Prepare for and Respond to Environmental Emergencies in the *FY 2022 - 2026 EPA Strategic Plan*. With the resources requested in FY 2023, this program will:

- Continue to promote a coordinated approach to EPA's homeland security activities and support the alignment of resources with government-wide national and homeland security priorities and requirements as defined by the NSC and the IC, including climate security, cybersecurity, and biodefense.

⁹⁰ Please see the following for more information: https://www.dhs.gov/sites/default/files/publications/2020_10_06_homeland-threat-assessment.pdf
<https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf>

- Continue to build on and develop the Agency's cybersecurity intelligence capabilities to provide a level of support that would enable EPA to better prepare for and respond timely to specific threats, mitigate attacks, assess evolving water sector cyber intelligence requirements, and assist in developing proposals to prevent/mitigate cyber incidents. By further building these capabilities, the Agency will be able to increase research, analyses, and engagement with the water and wastewater sector and partner agencies who deal with cybersecurity (i.e., DHS Cybersecurity and Infrastructure Security Agency (CISA)) and help EPA fulfill the requirements in Section 9002 of the FY 2021 National Defense Authorization Act. All indicators suggest cybersecurity threats and requirements, particularly those associated with the critical infrastructure sector, will only increase in number, complexity, and potential consequences for the foreseeable future.
- OHS and EPA's Water Program will develop an integrated strategy to work together more effectively to coordinate water and wastewater sector-wide cybersecurity threat information and intelligence sharing efforts. Specific examples of OHS' roles/responsibilities in this area include:
 - Engaging with the Water Sector Coordinating Council and the Water Information Sharing and Analysis Center (ISAC) to more closely work with CISA and the intelligence and law enforcement communities to facilitate access to, and exchange of, information and intelligence necessary to strengthen the security of critical infrastructure to obtain threat information and intelligence related to the water and wastewater sector to support emergency preparedness and planning efforts in a more timely manner;
 - Supporting risk assessment and risk management efforts by EPA in conjunction with CISA;
 - Engaging with the Water Sector Coordinating Council and the Water ISAC to more closely work with CISA and the intelligence and law enforcement communities to facilitate the identification of intelligence requirements and priorities of critical infrastructure owners and operators in the water and wastewater sector in coordination with the Director of National Intelligence and the heads of other Federal departments and agencies, as appropriate; and
 - Working with CISA to provide and facilitate awareness, within the water and wastewater sector, of ongoing, and where possible, real-time awareness of identified threats, vulnerabilities, mitigations, and other actions related to the security of the water and wastewater sector.
- Continue to develop new collaborative practices and methods with Intelligence Community agencies to meet the cybersecurity needs of the water and wastewater sector, along with other critical sectors, to address increasingly sophisticated and complex threat actor tactics and techniques. EPA has coordinated with NSC, CISA, and the water sector on several occasions regarding cyber-attacks on the water sector's IT and OT systems,

which has resulted in a renewed emphasis on notification and communication efforts with the water utilities.

- Continue to develop new collaborative practices and methods with Intelligence Community agencies and the National Security Council to meet the requirement in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*,⁹¹ “to place the climate crisis at the forefront of this Nation’s foreign policy and national security planning.”
- Continue to develop new collaborative practices and methods with Intelligence Community agencies and the National Security Council to address emerging domestic and global biological risks, including pandemics and national bio-preparedness policies.
- Continue to engage with CISA’s Intelligence and Analysis Branch for greater information sharing and engagement. OHS has developed a new partnership with the National Security Agency office providing cybersecurity support to critical infrastructure agencies.
- Provide more comprehensive support to the expanding collaborations with DOE, CISA, WaterISAC, and other programs on cyber threat response.
- Promote a coordinated approach to communicating classified and sensitive information to EPA programs, laboratories, and regional offices via secure communications systems to support timely intelligence and information sharing to enable safe and effective operational preparedness and response.
- Support federal, state, tribal, and local efforts to prevent, protect, mitigate, respond to, and recover from the impacts of natural disasters, acts of terrorism, and other emergencies by providing leadership and coordination across EPA’s program offices and regions.
- Ensure appropriate agency representation in various White House and other federal national security and homeland security policy activities. These efforts include serving as EPA’s representative for homeland security, national disaster response, and mitigation and recovery policy in monthly meetings of the Homeland Preparedness and Response Interagency Policy Committee (IPC), the Homeland Critical Infrastructure Resilience Interagency Policy Committee, chaired by the NSC, and in weekly NSC Cyber Response Group meetings and other national security policy committees. In addition, OHS serves as EPA’s representative in monthly meetings of the Recovery Support Function Leaders Group, chaired by the Federal Emergency Management Agency (FEMA), and the Mitigation Framework Leadership Group, also chaired by FEMA, and on other interagency workgroups.
- Focus on filling critical policy, knowledge, and technology gaps that may be essential for an effective EPA response, including working with our interagency partners to define

⁹¹ For additional information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

collective capabilities and resources that may contribute to closing common homeland security gaps, including emerging chemical threats and cybersecurity concerns for critical water infrastructure.

- Provide EPA end-users with relevant, accurate, reliable, objective, and timely intelligence bearing on matters of environmental policy and regulation and domestic threats and counterintelligence, where EPA functions to preserve or assist in the restoration of human health and the environment.
- Continue phased implementation of Executive Order 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information*⁹² to meet the main pillars of classified information protection with a focus on the implementation of an Insider Threat Program to address and mitigate threats to national security.
- Track emerging national and homeland security issues, through close coordination with the U.S. Intelligence Community, to anticipate and avoid crisis situations and target the agency's efforts proactively against threats to the United States.
- Phase in National Security Presidential Memorandum 28 (NSPM-28) to support OPSEC for the agency.
- Support the coordination and communication requirements of NSPM-32 to share information on critical incidents in a timely and effective manner.

In FY 2023, EPA also will support implementation of Executive Order 14028, *Improving the Nation's Cybersecurity*⁹³ through monitoring across the Agency's IT infrastructure to detect, remediate, and eradicate malicious activity/software from EPA's computer and data networks. Specific activities include:

- Continue to enhance internal Computer Security Incident Response Capability to ensure rapid identification and reporting of suspicious activity through increased training and awareness of cybersecurity threats. Training opportunities are provided to individual users to identify the most recent cybersecurity threats along with tabletop exercises to develop agency staff proficiency in responding to cyber security incidents.
- Improve threat intelligence sharing. EPA personnel are active participants in the United States Computer Emergency Readiness Team, a DHS-led group of experts from incident response and security response teams. Indicators and warnings are shared between EPA incident responders and their cleared counterparts in other agencies and with the Intelligence Community. This provides the ability to integrate actionable intelligence with deployed systems to improve cybersecurity defensive capabilities.

⁹² For more information, please see: <https://obamawhitehouse.archives.gov/the-press-office/2011/10/07/executive-order-13587-structural-reforms-improve-security-classified-net>.

⁹³ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>

- Continue maturation and refinement of Agency's Incident Response procedures in compliance with CISA's Playbook for Responding to Cybersecurity Vulnerabilities and Incidents.
- Continue work to integrate End Point Detection and Response (EDR) capabilities with the Continuous Diagnostics and Mitigation Program to support proactive detection of cybersecurity incidents within the EPA information environment, supporting active cyber hunting, containment and remediation, and incident response. This work includes extensive coordination with CISA and deployment of capabilities across the Agency to meet the requirements in OMB Memorandum M-22-01.⁹⁴
- Mature the security logging capabilities as outlined in OMB Memorandum M-21-31,⁹⁵ "Improving the Federal Government's Investigative and Remediation Capabilities Related to Cybersecurity Incidents." EPA is on track to comply with the system logging requirements in FY 2023 to meet Event Logging (EL) level 2 for Intermediate Logging requirements of highest and intermediate criticality and EL level 3 for Advanced Logging requirements at all criticality levels.
- In compliance with OMB Memorandum M-22-09,⁹⁶ "Moving the U.S. Government Toward Zero Trust Cybersecurity Principles," the SOC will support the implementation of a Zero Trust Architecture across the Agency.
- Continue to mature and refine the Vulnerability Disclosure Program (VDP) in compliance with Binding Operational Directive (BOD) 20-01,⁹⁷ "Develop and Publish a Vulnerability Disclosure Policy." The Agency will increase the scope of the program and improve response capabilities to expedite remediation and improve status reporting.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$120.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.

⁹⁴ For additional information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/10/M-22-01.pdf?ref=hackernoon.com>

⁹⁵ For additional information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/08/M-21-31-Improving-the-Federal-Governments-Investigative-and-Remediation-Capabilities-Related-to-Cybersecurity-Incidents.pdf>

⁹⁶ For additional information, please see: <https://www.whitehouse.gov/wp-content/uploads/2022/01/M-22-09.pdf>

⁹⁷ For additional information, please see: <https://cyber.dhs.gov/assets/report/bod-20-01.pdf>

- (+\$385.0 / +1.0 FTE) This program change is an increase in resources and FTE to support the Agency's homeland security coordination and intelligence efforts. This includes \$205.0 thousand in payroll.

Statutory Authority:

Resource Conservation and Recovery Act, §§ 1001, 2001, 3001, 3005; Safe Drinking Water Act; Clean Water Act, §§ 101, 102, 103, 104, 105, 107; Clean Air Act, §§ 102, 103, 104, 108; Toxic Substances Control Act, §§ 201, 301, 401; Federal Insecticide, Fungicide, and Rodenticide Act, §§ 136a-136y; Bio Terrorism Act of 2002, §§ 303, 305, 306, 307; Homeland Security Act of 2002; Post-Katrina Emergency Management Reform Act; Defense Against Weapons of Mass Destruction Act; and Food Safety Modernization Act, § 208.

Homeland Security: Critical Infrastructure Protection

Program Area: Homeland Security

Goal: Safeguard and Revitalize Communities

Objective(s): Prepare for and Respond to Environmental Emergencies

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$733</i>	<i>\$909</i>	<i>\$1,014</i>	<i>\$105</i>
Science & Technology	\$9,653	\$10,380	\$14,526	\$4,146
Total Budget Authority	\$10,386	\$11,289	\$15,540	\$4,251
Total Workyears	23.7	26.6	32.6	6.0

Program Project Description:

The Critical Infrastructure Protection Program supports EPA's efforts to coordinate and provide technical expertise to enhance the protection of the Nation's critical water infrastructure from terrorist threats and all-hazard events through effective information sharing and dissemination. This program provides water systems with current information on methods and strategies to build preparedness for natural and man-made threats.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.3, Prepare for and Respond to Environmental Emergencies in the *FY 2022 - 2026 EPA Strategic Plan*. The Program also will support the Agency's Infrastructure Investment and Jobs Act implementation priorities including preparing for and responding to cybersecurity challenges so that water systems are more resilient.

In FY 2023, EPA will build the capacity at water systems to identify and respond to threats to critical national water infrastructure by:

- Providing timely information on contaminant properties, water treatment effectiveness, detection technologies, analytical protocols, and laboratory capabilities;
- Supporting effective communication conduits to disseminate threat and incident information and to serve as a clearinghouse for sensitive information;
- Promoting information sharing between the water sector and environmental professionals, scientists, emergency services personnel, law enforcement, public health agencies, the intelligence community, and technical assistance providers. Through this exchange, water systems can obtain up-to-date information on current technologies in water security, accurately assess their vulnerabilities to terror acts, and work cooperatively with public health officials, first responders, and law enforcement officials to respond effectively in the event of an emergency;

- Providing water utilities, of all sizes, with access to a comprehensive range of important materials, including the most updated information, tools, training, and protocols designed to enhance the security (including cybersecurity), preparedness, and resiliency of the water sector (including addressing natural hazards, including climate change); and
- Ensuring that water utilities receive timely and informative alerts about changes in the homeland security advisory level and regional and national trends in certain types of water-related incidents. For example, should there be types of specific, water-related threats or incidents that are recurring, EPA, in coordination with the Department of Homeland Security and other appropriate agencies, will alert utilities of the increasing multiple occurrences of or trends in these incidents.

Effective information sharing protocols allow the water sector to improve its understanding of the latest water security and resiliency protocols and threats. These protocols reduce risk by enhancing the water sector's ability to prepare for an emergency.

Performance Measure Targets:

Work under this program supports Safe Drinking Water Act (SDWA) implementation and compliance and performance results in the Drinking Water Programs, under the EPM appropriation, to support safe drinking water for the Nation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$10.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$95.0) This program change is an increase in resources to support the protection of critical water infrastructure.

Statutory Authority:

Safe Drinking Water Act, §§ 1431-1435; Clean Water Act; Public Health Security and Bioterrorism Emergency and Response Act of 2002; Emergency Planning and Community Right-to-Know Act, §§ 301-305.

Homeland Security: Protection of EPA Personnel and Infrastructure

Program Area: Homeland Security

Goal: Safeguard and Revitalize Communities

Objective(s): Prepare for and Respond to Environmental Emergencies

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$4,915</i>	<i>\$4,959</i>	<i>\$5,139</i>	<i>\$180</i>
Science & Technology	\$500	\$501	\$501	\$0
Building and Facilities	\$7,006	\$6,676	\$6,676	\$0
Hazardous Substance Superfund	\$845	\$1,030	\$1,530	\$500
Total Budget Authority	\$13,266	\$13,166	\$13,846	\$680
Total Workyears	9.2	9.2	9.2	0.0

Total workyears in FY 2023 include 9.2 FTE to support Homeland Security Working Capital Fund (WCF) services.

Program Project Description:

Environmental Programs and Management resources for the Homeland Security: Protection of EPA Personnel and Infrastructure Program ensure that EPA maintains a robust physical security and preparedness infrastructure, ensuring that its numerous facilities are secured and protected in line with the federally mandated Interagency Security Committee standards.

In order to secure and protect EPA's personnel and physical infrastructure, the Agency operates a USAccess Personal Identity Verification (PIV) program, which adheres to the requirements as set forth in Homeland Security Presidential Directive-12 (HSPD-12).⁹⁸ This program ensures the Agency complies with government-wide standards for the issuance of secure and reliable forms of identification to federal employees and contractors who require access to federally controlled facilities and networks. Additionally, EPA's National Security Information (NSI) Program manages and safeguards EPA's classified information for its federal workforce and contractors. Through the NSI program, EPA initiates and adjudicates personnel background investigations, processes fingerprint checks, determines individual eligibility to access classified NSI, maintains personnel security records for all federal and non-federal employees, and conducts federally mandated training and NSI inspections.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.3, Prepare for and Respond to Environmental Emergencies in the *FY 2022 - 2026 EPA Strategic Plan*.

As part of the nationwide protection of buildings and critical infrastructure, EPA performs vulnerability assessments on facilities each year. Through this program, the Agency also

⁹⁸ For additional information, please see: <https://www.dhs.gov/homeland-security-presidential-directive-12>.

recommends security risk mitigations, oversees access control measures, determines physical security measures for new construction and leases, and manages the lifecycle of security equipment.

In FY 2023, EPA will continue to partner with the General Services Administration (GSA) on the Enterprise Physical Access Control System (ePACS). ePACS supports the Agency's modernization of its security infrastructure in compliance with HSPD-12 and ensures that the Agency is undertaking every effort to enhance safety, security, and efficiency by more effectively controlling access into all EPA-controlled physical space and networks. In addition, the Agency will continue to utilize GSA's Managed Service Office program, *USAccess*, for PIV card enrollment and issuance. *USAccess* is a GSA managed, shared services solution that provides EPA the ability to produce and maintain secure and reliable forms of identification, as required per HSPD-12, for all EPA employees and contractors.

EPA complies with 5 CFR 1400, which requires that federal and non-federal positions are designated for both risk and sensitivity and that personnel have appropriate background investigations commensurate with their position's risk and sensitivity designation. EPA will continue to manage the personnel security, suitability, fitness, and NSI programs and conduct background investigations following appropriate federal guidance, ensuring that personnel are properly investigated for the positions they encumber and that classified material and activity is properly handled. As federal guidelines and policies change or are introduced, the systems supporting background investigations and the NSI Program will be updated and enhanced as needed.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$180.0) This program change supports the protection of EPA personnel and infrastructure. These funds will support ePACS and the Agency's modernization of its security infrastructure efforts to control access into all EPA-controlled physical space and networks.

Statutory Authority:

Intelligence Reform and Terrorism Prevention Act of 2004; Privacy Act of 1974; REAL ID Act of 2005; Homeland Security Act of 2002; Americans with Disabilities Act; Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

Indoor Air and Radiation

Indoor Air: Radon Program

Program Area: Indoor Air and Radiation

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Reduce Exposure to Radiation and Improve Indoor Air

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$2,224</i>	<i>\$3,136</i>	<i>\$5,004</i>	<i>\$1,868</i>
Science & Technology	\$112	\$157	\$157	\$0
Total Budget Authority	\$2,336	\$3,293	\$5,161	\$1,868
Total Workyears	8.8	9.0	12.4	3.4

Program Project Description:

Title III of the Toxic Substances Control Act (TSCA) authorizes EPA to take a variety of actions to address the public health risk posed by exposure to indoor radon. Under the statute, EPA studies the health effects of radon, assesses exposure levels, sets an action level, provides technical assistance to states, industry, and the public, advises the public of steps they can take to reduce exposure, and promotes the availability of reliable radon services and service providers to the public.

Radon is the second leading cause of lung cancer in the United States – and the leading cause of lung cancer mortality among non-smokers – accounting for about 21,000 deaths per year.⁹⁹ The EPA's non-regulatory Indoor Air: Radon Program promotes actions to reduce the public's health risk from indoor radon. EPA and the Surgeon General recommend that people do a simple home radon test and, if levels above the EPA's guidelines are confirmed, reduce elevated levels by home mitigation using inexpensive and proven techniques. EPA also recommends that new homes be built using radon-resistant features in areas where there is elevated radon. Nationally, risks from radon have been reduced in many homes over the years, but many homes are still in need of mitigation. This voluntary program promotes partnerships among national organizations, the private sector, and more than 50 state, local, and tribal governmental programs to reduce radon risk.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.2, Reduce Exposure to Radiation and Improve Indoor Air in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA is requesting additional resources to support restoration of core capacity in this Program, including building up staff expertise and analytical capabilities.

⁹⁹ <https://www.epa.gov/radon>.

EPA will continue to lead the federal government’s response to radon and to implement the Agency’s own multi-pronged radon program. Work in this program supports the President’s priority of advancing environmental justice. EPA will drive action at the national level to reduce radon risk in homes and schools through the National Radon Action Plan, partnerships with the private sector and public health groups, technical assistance to states and industry, public outreach, and education activities. The Agency will encourage radon risk reduction as a normal part of doing business in the real estate marketplace, will promote local and state adoption of radon prevention standards in building codes, and will participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry. EPA will continue working to update the framework that ensures a quality, credentialed radon workforce.

Performance Measure Targets:

(PM LCD) Number of lung cancer deaths prevented through lower radon exposure.	FY 2022 Target	FY 2023 Target
	1,881	1,962

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$101.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$1,767.0 / +3.4 FTE) This increase in resources supports efforts to restore EPA's staff expertise, analysis, and capacity in the indoor air radon program in order to better lead the federal government’s response to radon and to implement the Agency’s own multi-pronged radon program. This investment includes \$647.0 thousand in payroll.

Statutory Authority:

Title III of the Toxic Substances Control Act (TSCA); Title IV of the Superfund Amendments and Reauthorization Act (SARA); Clean Air Act.

Radiation: Protection

Program Area: Indoor Air and Radiation

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Reduce Exposure to Radiation and Improve Indoor Air

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$8,283	\$7,661	\$10,588	\$2,927
Science & Technology	\$1,645	\$1,735	\$2,224	\$489
Hazardous Substance Superfund	\$1,973	\$1,985	\$2,872	\$887
Total Budget Authority	\$11,901	\$11,381	\$15,684	\$4,303
Total Workyears	60.0	53.8	66.7	12.9

Program Project Description:

EPA has general and specific duties to protect human health and the environment from harmful and avoidable exposure to radiation under multiple statutes. EPA's Radiation Protection Program carries out these responsibilities through its federal guidance and standard-setting activities, including: regulatory oversight and implementation of radioactive waste disposal standards for the Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP); the regulation of airborne radioactive emissions; general disposal standards for nuclear waste repositories; and the development and determination of appropriate methods to measure and to model radioactive releases and exposures under Section 112 of the Clean Air Act. The Radiation Protection Program also supports EPA, state, local and tribal authorities by providing radiation protection scientific analyses and recommendations needed to inform risk management policies, and the necessary radiation risk communications expertise to support local community engagement on issues related to legacy contamination and environmental justice needs.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.2, Reduce Exposure to Radiation and Improve Indoor Air in the *FY 2022 - 2026 EPA Strategic Plan*.

EPA will meet its statutory obligation to implement its regulatory oversight responsibilities for DOE activities at the WIPP facility, as mandated by Congress in the WIPP Land Withdrawal Act of 1992. In FY 2023, EPA anticipates conducting a detailed review of the DOE request for expanding the WIPP repository to address needs for more waste disposal area, permitting disposal of previously identified transuranic waste as well as more recently identified needs for disposal of surplus plutonium. EPA will review and implement regulations or guidance, as necessary. The Agency also will provide technical and policy analysis supporting scientific goals for space exploration. EPA serves on the Interagency Nuclear Safety Review Board with NASA and DOD to provide launch safety analysis. EPA scientists will participate, as appropriate, in interagency working groups to examine issues of low-dose radiation health impacts and identify any needed

changes to existing technical and policy guidance. EPA radiation risk communicators will provide radiation-related website and communications product content that is clear and accessible to the general public, including those with limited English proficiency.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$315.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,612.0 / +8.3 FTE) This program change is an increase that supports efforts to restore EPA's staff expertise, analysis, and capacity in the radiation protection program to provide radiation protection scientific analyses and recommendations needed to inform risk management policies. It also supports the necessary radiation risk communications expertise for local community engagement on issues related to legacy contamination and environmental justice needs. This investment includes \$1.485 million in payroll.

Statutory Authority:

Atomic Energy Act of 1954; Clean Air Act; Energy Policy Act of 1992; Nuclear Waste Policy Act of 1982; Public Health Service Act; Safe Drinking Water Act; Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978; Waste Isolation Pilot Plant Land Withdrawal Act of 1992; Marine Protection, Research, and Sanctuaries Act; Clean Water Act.

Radiation: Response Preparedness

Program Area: Indoor Air and Radiation

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Reduce Exposure to Radiation and Improve Indoor Air

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$2,703</i>	<i>\$2,404</i>	<i>\$3,004</i>	<i>\$600</i>
Science & Technology	\$3,063	\$3,096	\$4,383	\$1,287
Total Budget Authority	\$5,766	\$5,500	\$7,387	\$1,887
Total Workyears	32.1	33.3	41.4	8.1

Program Project Description:

EPA generates policy guidance and procedures for the Agency's radiological emergency response under the National Response Framework (NRF) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Agency maintains its own Radiological Emergency Response Team (RERT) and is a member of the Department of Homeland Security/Federal Emergency Management Agency Federal Radiological Preparedness Coordinating Committee (FRPCC) and the Federal Advisory Team for Environment, Food and Health (the "A-Team"). The A-Team includes radiation protection experts from EPA, the Centers for Disease Control and Prevention, the Food and Drug Administration and the Department of Agriculture, and their function is to advise federal, state, local and tribal authorities during radiological/nuclear emergencies on public safety issues including evacuation, sheltering, and contamination concerns for food, drinking water and other resources. EPA continues to respond to radiological emergencies; conducts essential national and regional radiological response planning and training; and develops response plans for radiological incidents or accidents.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.2, Reduce Exposure to Radiation and Improve Indoor Air in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to streamline activities and fill gaps in the expertise that is critical for essential preparedness work, restoring critical capacity to meet EPA's core mission. The RERT will maintain essential readiness to support federal radiological emergency response and recovery operations under the NRF and NCP. EPA will participate in interagency training and exercises to maintain readiness levels needed to fulfill EPA's responsibilities.

Evaluation of Response Plans

In FY 2023, EPA will continue to work with interagency partners, including those under the FRPCC as well as those at the state, local and tribal levels to examine and, as needed, revise radiation emergency response plans, protocols, and standards. Under the NRF, EPA is the coordinating

agency for responding to foreign nuclear incidents, such as the Fukushima accident. In FY 2023, EPA will maintain staff readiness and training needed to meet the Agency's mission during such incidents. EPA will review and revise preparedness guidance to ensure that the Agency's response efforts address the needs of the public, with special emphasis on the most vulnerable. EPA will support the U.S. Government assessment of foreign nuclear technology used in space nuclear systems and advanced reactor technologies. Building on efforts started in FY 2022, EPA will continue work on the safety evaluation of the National Aeronautics and Space Administration's DRACO mission for potential impacts to human health and the environment and begin contingency planning for its mission launch, scheduled for 2025.

Coordinating Preparedness Efforts

EPA will continue essential planning and will participate in interagency table-top and field exercises, including radiological accident and incident response and anti-terrorism activities with The Advisory Team for Environment, Food, and Health, the Nuclear Regulatory Commission, the Department of Energy, the Department of Defense, and the Department of Homeland Security. The Agency also will provide technical support on priority issues to federal, state, local and tribal radiation, emergency management, solid waste and health programs responsible for implementing radiological emergency response and preparedness programs. The Agency will continue to train and advise on the Protective Action Guidance¹⁰⁰ and use lessons learned from incidents and exercises to ensure the effective delivery of EPA support in coordination with other federal, state, local and tribal authorities.

Performance Measure Targets:

(PM RAD2) Percentage of radiation emergency response program personnel and assets that meet functional readiness requirements necessary to support federal radiological emergency response and recovery operation.	FY 2022 Target	FY 2023 Target
	90	92

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$36.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$564.0 / +3.1 FTE) This net program change is an increase that supports efforts to restore EPA's staff expertise, analysis, and capacity in the radiation response program in order to examine and, as needed, revise radiation emergency response plans, protocols, and standards and continue essential planning for preparedness efforts. This investment includes \$565.0 thousand in payroll.

¹⁰⁰ For additional information, please see: https://www.epa.gov/sites/production/files/2017-01/documents/epa_pag_manual_final_revisions_01-11-2017_cover_disclaimer_8.pdf.

Statutory Authority:

Homeland Security Act of 2002; Atomic Energy Act of 1954; Clean Air Act; Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA); Public Health Service Act (PHSA); Robert T. Stafford Disaster Relief and Emergency Assistance Act; Safe Drinking Water Act (SDWA).

Reduce Risks from Indoor Air

Program Area: Indoor Air and Radiation

Goal: Ensure Clean and Healthy Air for All Communities

Objective(s): Reduce Exposure to Radiation and Improve Indoor Air

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$10,968</i>	<i>\$11,750</i>	<i>\$23,542</i>	<i>\$11,792</i>
Science & Technology	\$296	\$161	\$173	\$12
Total Budget Authority	\$11,264	\$11,911	\$23,715	\$11,804
Total Workyears	40.8	37.2	68.1	30.9

Program Project Description:

Title IV of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes EPA to conduct and coordinate research on indoor air quality, develop and disseminate information, and coordinate risk reduction efforts at the federal, state, and local levels. Poor indoor air quality represents one of the largest risks in EPA's portfolio.¹⁰¹ EPA uses a range of strategies to reduce health risks from poor indoor air quality in homes, schools, and other buildings through partnerships with non-governmental, professional, federal, state and local organizations. Through these partnerships EPA provides information, guidance and technical assistance that equips industry, the health care community, the residential, school and commercial building sectors, and the general public to take action. As technical experts working at the intersection of the built environment and health, EPA is focused on policy and guidance to improve building conditions, including for disproportionately impacted communities, to reduce indoor air risk and achieve improvements in environmental and health outcomes.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 4/Objective 4.2, Reduce Exposure to Radiation and Improve Indoor Air in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Indoor Air Program will include efforts targeted to children, underserved communities and other vulnerable populations, with a particular focus on new demands and opportunities for improvements in ventilation, filtration, and other protective indoor air practices, including those created by the COVID-19 pandemic and wildfire events. EPA will continue to lead on these issues by providing technical assistance and guidance on upgrading public buildings including schools to protect against airborne disease transmission and wildfire smoke exposure and provide guidance to the general public to reduce harmful exposures indoors, emphasizing that these upgrades will be beneficial to not only pandemic preparedness and disaster resilience, but also improved public health in the long-term.

¹⁰¹ <https://www.epa.gov/iaq>.

Additionally, EPA will collaborate with public and private sector organizations to provide clear and verifiable protocols and specifications for promoting good indoor air quality and support adoption of these protocols and specifications into existing healthy, energy efficiency, and green building programs and initiatives to promote healthy buildings for a changing climate. EPA also will equip the housing sector with guidance to promote the adoption of these best practices with the aim of creating healthier, more energy efficient homes, including for low-income families. EPA also will equip school leaders to make science-based decisions and implement sustainable ventilation, filtration and other indoor air quality improvements for healthy school environments. EPA will build the capacity of community-based organizations to provide comprehensive asthma care that integrates management of indoor environmental asthma triggers and health care services, with a particular focus on low-income, minority, and tribal communities. Through FY 2021, EPA has equipped 1,600 programs to support the infrastructure, delivery, and sustainability of comprehensive asthma care. Through FY 2023, EPA will equip an additional 2,100 programs.

Internationally, EPA will renew support of the household energy sector, providing technical assistance and promoting the adoption of voluntary international stove standards to accelerate adoption of clean cookstoves and fuels, in order to reduce the climate, health, and equity impacts of rudimentary stove use in developing nations. EPA will work with partners to increase the sustained use of clean and efficient cookstoves by helping ensure the distribution of 60 million clean cookstoves worldwide in FY 2023.

Performance Measure Targets:

(PM IA) Number of additional programs, annually, equipped to support the infrastructure, delivery and sustainability of comprehensive asthma care.	FY 2022 Target	FY 2023 Target
	1,800	2,100
(PM CS) Millions of demonstrably improved (field or lab tested) cookstoves sold.	FY 2022 Target	FY 2023 Target
	50	60

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$400.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$11,392.0 / +30.9 FTE) This program change is an increase that supports efforts to restore EPA's staff expertise, analysis, and capacity in the indoor air program. Funds also support efforts to address indoor air quality during wildfires, to reduce asthma disparities, to promote healthy school facilities in low-income communities in the U.S., and to address the international climate crisis by improving public health through the adoption of clean cookstoves. This investment includes \$5.606 million in payroll.

Statutory Authority:

Title IV of the Superfund Amendments and Reauthorization Act (SARA); Title III Toxic Substances Control Act; Clean Air Act.

Information Exchange

Children and Other Sensitive Populations: Agency CoordinationProgram Area: Information Exchange / Outreach
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$8,277	\$6,173	\$6,362	\$189
Total Budget Authority	\$8,277	\$6,173	\$6,362	\$189
Total Workyears	18.2	18.4	18.4	0.0

Program Project Description:

The Children's Health Program coordinates and advances the protection of children's environmental health across the EPA by assisting with developing regulations, improving risk assessment and science policy, implementing community-level outreach and education programs, and tracking indicators of progress on children's health. The Children's Health Program is directed by the *Policy on Evaluating Health Risks to Children*,¹⁰² Executive Order (EO) 13045 *Protection of Children's Health from Environmental Health Risks and Safety Risks*,¹⁰³ statutory authorities addressing children's environmental health, and other existing guidance.¹⁰⁴

In FY 2021, the Children's Health Program supported Pediatric Environmental Health Specialty Units by providing supplemental programming on children's health in Environmental Justice (EJ) communities, particularly during the COVID pandemic;¹⁰⁵ awarded two grants to provide technical assistance to support the improvement of school facilities¹⁰⁶ and announced a new grant opportunity¹⁰⁷ for up to 10 awardees to support healthy school environments with an emphasis on underserved communities; hosted a workshop for public health officials on children's health and wildfire smoke; partnered with Scholastic to host a challenge that reached over 68 percent of middle school teachers and 117,000 student participants regarding stormwater and children's health protection; conducted two plenary meetings of the Children's Health Protection Advisory Committee (CHPAC)¹⁰⁸ to receive advice on healthy school environments and TSCA, and launched a new charge regarding the Consideration of Legally Working Children in Pesticide Exposure Assessments; developed a video to provide basic children's environmental health information; and conducted events and outreach to stakeholders to reinvigorate EPA's presence and voice, among other initiatives.

¹⁰² For more information, please see: <https://www.epa.gov/children/epas-policy-childrens-health>.

¹⁰³ For more information, please see: <https://www.govinfo.gov/content/pkg/FR-1997-04-23/pdf/97-10695.pdf>.

¹⁰⁴ For more information, please see: <https://www.epa.gov/children/rules-and-regulations-impact-childrens-health>.

¹⁰⁵ For more information, please see: <https://www.pehsu.net/>.

¹⁰⁶ For more information, please see: <https://www.epa.gov/newsreleases/epa-announces-selection-organizations-receive-funding-healthy-learning-environments>.

¹⁰⁷ For more information, please see: <https://www.epa.gov/newsreleases/epa-announces-request-applications-childrens-healthy-learning-environments-low-income>.

¹⁰⁸ For more information, please see: <https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac>.

The Children's Health Program has a successful track record of collaboration with non-governmental organizations, state, local and tribal governments, and other federal agencies. To further protection of children in EJ communities, and those affected by climate change, the Program led the steering committee of the President's Task Force on Environmental Health Risks and Safety Risks to Children to prepare for a meeting of cabinet-level principals which was held in early FY 2022 to establish a new subcommittee to focus on children's environmental health, climate change and disasters, and to rejuvenate subcommittees on lead and asthma disparities. Within EPA, the Office of Children's Health Protection (OCHP) collaborates closely with EPA's national program managers and regional offices, as well as EPA's Office of Environmental Justice, to develop effective tools and messages in support of children in underserved communities who disproportionately suffer from adverse environmental exposures, and to advance information and messaging to address health risks to children from climate change.

In FY 2021, the Children's Health Program contributed to the development of approximately 100 regulations, scientific assessments and/or policies, including actions under the Toxic Substances Control Act, Safe Drinking Water Act, Food Quality Protection Act, and Clean Air Act, among others. The Program finalized an update to EPA's *2021 Policy on Children's Health*¹⁰⁹ that considers scientific advances from the past 25 years and broadens scope to encompass the full breadth of activities performed by EPA in support of children, including EJ and climate change; and began formulation of metrics to report on progress. OCHP contributed to the Interagency Policy Councils on Child and Maternal Health to assist their development to all-of-government approaches for protecting children's health in schools and improving maternal health outcomes. OCHP partnered with the Department of Health and Human Services to support the Lead Exposure and Prevention Advisory Committee. OCHP reached stakeholders through nearly 135,000 web impressions, and instituted approaches to better coordinate headquarters and regional children's environmental health activities.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

Children's environmental health refers to the effect of the environment on children's growth, wellness, development, and risk of disease. EPA strives for all parts of the Agency to apply and promote the use of the best available science, policy, partnerships, communications, and action to protect children from adverse health effects resulting from harmful environmental exposures. In FY 2023, EPA will continue to protect children in underserved communities who suffer disproportionately from the effects of exposures enhanced by socio-economic determinants of health, and to address children's exposures which are exacerbated by climate change. EPA actions will be informed by two important considerations; first, the scientific understanding of childhood as a sequence of life stages, from conception through infancy and adolescence to early adulthood (age 21); and second, the recognition that protecting children's health is necessary to protect human health, because every adult was once a child.

¹⁰⁹ For additional information, please see: <https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf>.

In FY 2023, the Children's Health Program will focus on implementing the *2021 Policy on Children's Health* to ensure that EPA consistently and explicitly considers early life exposures and lifelong health in all human health decisions. The Program will convene the steering committee of President's Task Force on Environmental Health Risks and Safety Risks to Children to report on progress in the areas of climate change and disasters, childhood lead; asthma disparities; and climate, emergencies and disasters, among other topics. The Program will continue to build on partnerships with key stakeholders and leverage resources and work for durable, nationally relevant improvements in children's health protection.

In FY 2023, the Program will evaluate and identify follow-up actions to an expected FY 2022 state-of-the-science report by the National Academies of Science, Engineering, and Medicine on the latest scientific advancements on children's environmental health. The Program also will host a variety of activities to mark Children's Health Month in October to educate parents, caregivers, teachers, and others on how to better protect children from adverse environmental exposure. The Program will coordinate two meetings of the Children's Health Protection Advisory Committee, with delivery of expert responses to additional charge questions related to high priority children's environmental health issues.

Performance Measure Targets:

(PM CH01) Percentage of completed EPA actions that concern human health that include assessment and consideration of environmental health information and data for children at all life stages.	FY 2022 Target	FY 2023 Target
	50	70
(PM CH02) Number of EPA regional offices with stakeholder engagement on children's environmental health designed to provide durable, replicable, and widespread results.	FY 2022 Target	FY 2023 Target
	3	5

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$129.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$60.0) This program change is an increase to provide additional support for existing programs and workforce in the Children's Health Program. This includes updating and expanding indicators and trends in America's Children and the Environment by gathering evidence to better represent impacts of environmental exposures on children in underserved communities and by making improvements in the accessibility and presentation of the underlying data.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Toxic Substances Control Act (TSCA); Safe Drinking Water Act (SDWA); Comprehensive Environmental Response, Compensation, and

Liability Act (CERCLA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Food Quality Protection Act (FQPA).

Environmental Education

Program Area: Information Exchange / Outreach

Goal: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective(s): Promote Environmental Justice and Civil Rights at the Federal, Tribal, State and Local Levels

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$3,311</i>	<i>\$8,580</i>	<i>\$8,668</i>	<i>\$88</i>
Total Budget Authority	\$3,311	\$8,580	\$8,668	\$88
Total Workyears	10.1	9.2	9.2	0.0

Program Project Description:

In 1990, the National Environmental Education Act (NEEA) was established with the objective of improving the public's understanding and knowledge of the natural and built environment, enabling people to effectively solve environmental problems. NEEA states that “there is growing evidence of international environmental problems, such as global warming...that pose serious threats to human health and the environment.”¹¹⁰ The Office of Environmental Education (OEE) has been tasked with implementing environmental education (EE) programming that helps EPA address these issues from the local community to national and international levels with a focus on frontline communities that are pollution-burdened and as well as underserved communities.

EPA's OEE staff manage the National Environmental Education Act Federal Advisory Committee. Congress established the Agency's NEEAC under the NEEA, to advise the Administrator on a wide range of environmental education matters.

The Program provides management and technical support to these advisory committees. The Committee provides EPA's Administrator with independent advice on environmental issues, addresses environmental issues, like climate change, that impact frontline and underserved communities, through education, a commitment to equity, and stakeholder grants authorized by the NEEA. OEE also supports the Agency's environmental and public health protection goals by empowering communities with expanded access to quality environmental and climate education, providing educational materials for teachers, hosting educational events and, engaging stakeholders through the National Environmental Education and Training Program (teacher training program), the Presidential Environmental Youth Award (PEYA) Program, and the Presidential Innovation Award for Environmental Educators (PIAEE) Program. These programs promote civic action to reduce the impacts of climate change and promote environmental and climate equity through an educational lens.

In FY 2021, OEE recognized 15 educators and 32 students for their leadership and commitment to environmental education and environmental stewardship. In FY 2021, five educators received

¹¹⁰ For more information, please see: <https://www.epa.gov/sites/production/files/documents/needa.pdf>.

the 2021 PIAEE, and 10 educators were recognized with an honorable mention distinction. Winning educators demonstrated leadership by integrating environmental education into multiple subjects and using topics such as climate change, a healthy school environment, environmentally friendly agriculture practices, human contributions to ocean litter, Science, Technology, Engineering, and Mathematics education, and recycling or school gardens.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 2/Objective 2.1, Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels in the *FY 2022 - 2026 EPA Strategic Plan*.

OEE will implement the teacher training program and regional grant program with a focus on fighting climate change and protecting public health through EE and improved engagement with frontline communities that are pollution-burdened as well as underserved communities.

In FY 2023, OEE will:

- Support career development through education by funding innovative EE grant projects in frontline communities that can lead to inclusive, just, and pollution-free communities and an economy that supports high-quality jobs.
- Create an OEE's grant website tool for the public that provides detailed and valuable information on all OEE regional grants, including information on audience, project format and duration, environmental topic, and the environmental and educational impacts achieved.
- Ensure formal and non-formal educators have the knowledge and teaching skills necessary to help advance environmental and climate literacy in America through the National Environmental Education and Training Program.
- Build strategic partnerships that include underserved and overburdened communities to increase the conversation around using EE as a tool to achieve environmental protection goals while achieving environmental justice (EJ), climate equity, and economic prosperity.
- Ask the National Environmental Education Advisory Council (NEEAC) to provide a set of national recommendations on how frontline and underserved communities can use EE to build capacity to become resilient to the effects of climate change.
- Create public and private partnerships through the National Environmental Education Foundation (NEEF) to develop programs and initiatives that can empower frontline communities to address environmental threats, advance equity, and increase economic prosperity for all.

- Create a whole of federal government approach to environmental and climate education that promotes environmental stewardship and prioritizes equity, inclusion, EJ, and an improved economy. For example, collaborate with the Department of Education to enlist colleges and universities focusing on Minority Serving Institutions to assist underserved communities through student internships, practicums, and capstone projects.
- Utilize an information management system that will track outputs and outcomes for each grant to ensure program effectiveness, improve program efficiency, and improve OEE's overall customer service. The information tracking system also will be used for the PEYA and PIAEE Programs.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$72.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$16.0) This program change is an increase to support building public awareness and knowledge through environmental education on issues such as climate change and environmental justice.

Statutory Authority:

National Environmental Education Act (NEEA); Clean Air Act (CAA), § 103; Clean Water Act (CWA), § 104; Solid Waste Disposal Act (SWDA), § 8001; Safe Drinking Water Act (SDWA), § 1442; Toxic Substances Control Act (TSCA), § 10; Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), § 20, and the Federal Advisory Committee Act (FACA).

Exchange Network

Program Area: Information Exchange / Outreach
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$13,713</i>	<i>\$14,084</i>	<i>\$14,413</i>	<i>\$329</i>
Hazardous Substance Superfund	\$1,511	\$1,328	\$1,328	\$0
Total Budget Authority	\$15,224	\$15,412	\$15,741	\$329
Total Workyears	28.8	30.2	30.2	0.0

Program Project Description:

EPA's Environmental Information Exchange Network (EN) is a standards-based, secure approach for EPA and its state, tribal, and territorial partners to exchange and share environmental data over the internet. Capitalizing on advanced technology, data standards, open-source software, shared services for EPA's Digital Strategy, and reusable tools and applications, the EN offers its partners tremendous capabilities for managing and analyzing environmental data more effectively and efficiently, leading to improved decision-making.

The Central Data Exchange (CDX)¹¹¹ is the largest component of the EN Program and serves as the point of entry on the EN for environmental data transactions with the Agency. CDX provides a set of core shared services that promote a leaner and more cost-effective service framework for the Agency by avoiding the creation of duplicative applications. It enables faster and more efficient transactions for internal and external EPA clients, resulting in reduced burden.

Working in concert with CDX is EPA's System of Registries, which is a system of shared data services designed to enhance efficiency, reduce burden on the regulated community, and improve environmental outcomes, including environmental justice. EPA and EN partners routinely reference these shared data registries, from commonly regulated facilities and substances to the current list of federally recognized tribes. They identify the standard or official names for these assets, which, when integrated into EPA and partner applications, foster data consistency and data quality as well as enable data integration.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to support core functions for the EN information technology (IT) systems. The EN Program will continue to be a pivotal component of EPA's Digital Strategy that

¹¹¹ For more information on the Central Data Exchange, please see: <https://cdx.epa.gov/>.

supports business process change agencywide. Under this strategy and the 21st Century Integrated Digital Experience Act,¹¹² the Agency is streamlining business processes and systems to reduce reporting burden on states and regulated facilities and to improve the effectiveness and efficiency of environmental programs for EPA, states, and tribes. EPA also is responsible for managing EN technical governance groups and administering the pre- and post-award phases of the EN grants to states, tribes, and territories. These efforts support a standards-based, secure approach for EPA and its state, tribal, and territorial partners to efficiently exchange and share environmental data electronically. The Agency also administers and implements the Cross-Media Electronic Reporting Regulation (CROMERR) that removes regulatory obstacles for e-reporting to EPA programs under Title 40 of the Code of Federal Regulations (CFR).

EPA aims to reduce burden and avoid costs while improving IT. The Agency provisioned Virtual Exchange Services (VES), or virtual nodes, to facilitate data transactions supporting states and tribal partners. EPA will continue to carry out the baseline support for the adoption and onboarding of VES and associated services for EPA and its partners. This includes providing a technology framework – shared CROMERR services – which reduces the burden on programs and external reporters by providing CROMERR compliant solutions. For example, the shared electronic identity proofing and signature services for CROMERR supports 31 partner regulatory reporting programs to date. EPA estimates that partners adopting shared CROMERR services save \$120 thousand in development and at least \$30 thousand in operations each year, which results in a cost avoidance of greater than \$2.5 million for EN partners.

In FY 2023, EPA will continue to improve the functionality and use of the System of Registries.¹¹³ In addition to streamlining the Registries, EPA will launch a broader effort across the enterprise to engage organizations and facilitate the adoption of these data services through Cloud technology and Representational State Transfer (REST or RESTful) application programming interfaces (API). Registries are shared data services in which common data are managed centrally but shared broadly. They improve data quality in EPA systems, enable integration and interoperability of data across program silos, and facilitate discovery of EPA information. An example of the Agency's effort to promote the adoption of data services is the integration of the tribal identification services (TRIBES) across EPA systems.

In FY 2023, EPA will continue implementing a solution related to shared facility identification information. Centralized facility management also is fundamental to better environmental management by bringing together EPA data across programmatic silos. Like facility data, substance information also is regulated across EPA programs, with many EPA programs relying on the Substance Registry Service (SRS) to improve data quality and reduce burden.

EPA tracks the number of registry webpages, users, and web service hits as one measure of usage. For example, the SRS website is visited by approximately 60 thousand users per month; many of these users visit SRS to understand regulatory information about chemicals. SRS also receives between 20 thousand and 140 thousand web service hits per month (depending on reporting cycles), mostly by EPA systems that have incorporated the web services into their online reporting

¹¹² For more information on the 21st Century Integrated Digital Experience Act, please refer to: <https://www.congress.gov/115/plaws/publ336/PLAW-115publ336.pdf>.

¹¹³ For more information, please see: https://ofmpub.epa.gov/sor_internet/registry/sysofreg/about/about.jsp.

forms. Priorities for EPA registries include improving registry technologies by moving them into an open-source platform, so they are cloud-ready.

In FY 2023, EPA will migrate TRIBES, SRS, and the Registry of EPA Applications, Models and Data Warehouses (READ) to a cloud-based open-source platform. EPA will continue to expand the number of EPA and partner systems that integrate registry services into their online reports and systems, reducing burden and improving data quality. This includes updating EPA's dataset registry to allow EPA scientists, external partners, and others to share information and make information easier to find in the cloud.

In FY 2023, EPA will continue to work with the Department of Homeland Security's Customs and Border Protection (CBP) to maintain, utilize, and improve systems to facilitate the import and export of legitimate goods and leverage big data and artificial intelligence tools to identify and prevent or stop illegal goods from entering or leaving the United States. EPA supports over 20 data exchange types within EPA and with CBP to automate and streamline over 8 million annual import and export filings. This automation is essential for managing a significantly increasing number of imports and exports (*e.g.*, due in large part to e-Commerce) and allows coordinators/officers to focus on compliance monitoring and key high-value targeting activities for non-compliant imports and exports, and to better coordinate with CBP.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$329.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs. This change also includes program increases for the Exchange Network Program to support environmental data sharing among EPA, state, tribes, and territories.

Statutory Authority:

Federal Information Security Management Act (FISMA); Clean Air Act (CAA); Clean Water Act (CWA); Toxic Substances Control Act (TSCA); Federal Insecticide Fungicide and Rodenticide Act (FIFRA); Resource Conservation and Recovery Act (RCRA); Government Performance and Results Act (GPRA); Government Management Reform Act (GMRA); Clinger-Cohen Act (CCA).

Executive Management and Operations

Program Area: Information Exchange / Outreach
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$48,837</i>	<i>\$46,836</i>	<i>\$63,256</i>	<i>\$16,420</i>
Total Budget Authority	\$48,837	\$46,836	\$63,256	\$16,420
Total Workyears	263.6	272.1	309.1	37.0

Total workyears in FY 2023 include 6.2 FTE to support Executive Management and Operations working capital fund (WCF) services.

Program Project Description:

The Executive Management and Operations Program supports various offices that provide direct executive and logistical support to EPA's Administrator. In addition to the Administrator's Immediate Office (IO), the Program supports the Office of Congressional and Intergovernmental Relations (OCIR), Office of Administrative and Executive Services (OAES), Office of the Executive Secretariat (OEX), the Office of Public Affairs (OPA), and the Office of Public Engagement and Environmental Education (OPEEE).

The Program also supports EPA's 10 regions. The Program's management, coordination, and policy activities link the Agency's engagement with outside entities, including Congress, state and local governments, tribes, nongovernmental organizations, national and community associations, and the public.

Within the Program, key functions include responding to congressional requests for information; coordinating and providing outreach to state and local governments, tribes, and rural communities; and supporting press and other communications activities. The Program also resources mission support functions, including but not limited to administrative management services involving correspondence control and records management systems, human resources management, budget formulation and execution, outsourcing, and information technology management services.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an additional \$16.4 million to support engagement with state and local partners, enhance training of healthcare providers in underserved communities on the prevention, diagnosis, management, and treatment of children's exposure to lead, implement and strengthen the Agency's ability to carry out effective risk communication, restore core capacity to the Executive Management and Operations Program, provide contract support for the Agency's

management operations and multi-media and risk communications, and support evidence building activities in support of the Foundations for Evidence-Based Policymaking Act of 2018.

OCIR serves as EPA's principal point of contact for Congress, regions, states, and local governments and as the coordination point for interaction with other agency offices and officials. OCIR is comprised of two main components: the Office of Congressional Affairs (OCA) and Office of Intergovernmental Relations (OIR). OCA facilitates all legislative activity and interactions with Congress. OIR manages interactions with state and local governments and serves as the liaison for the Agency with national associations for state and local officials.

In FY 2023, OCA will continue to prepare EPA officials for hearings, oversee responses to written inquiries and oversight requests from members of Congress, and coordinate and provide technical assistance and briefings on legislative areas of interest to members of Congress and their staff.

In FY 2023, OIR will continue to inform and consult with state and local governments on regulations and other EPA activities. Additionally, OIR will continue to lead the Agency's efforts to support and build partnerships with the states, local governments, and tribes on environmental priorities through regular engagements with intergovernmental associations and state and local officials, as well as through the National Environmental Performance Partnership System and the increased use of Performance Partnership Agreements and Grants with a focus on addressing climate change and ensuring underserved communities are considered throughout the process. OIR also will continue to operate its Local Government Advisory Committee and Small Communities Advisory Subcommittee, which provide critical advice to the Administrator.

In addition, OCIR will continue to regularly review and evaluate its processes for responding to congressional and intergovernmental correspondence and Freedom of Information Act (FOIA) requests; prepare for hearings or briefings; provide technical assistance; and coordinate with EPA's program offices, regional offices, states, local officials, and associations. In addition, the Agency requests an additional \$2.45 million to support EPA's implementation of the Foundations for Evidence-Based Policymaking Act of 2018. OCIR's activities supporting the Grant Commitments Met learning priority area in EPA's Learning Agenda, will include conducting reviews of select agency grant programs to learn if the commitments established and met are achieving the intended environmental results, and provide recommendations, as appropriate, to inform future grants management.

OPA facilitates the exchange of information between EPA and the public, media, Congress, and state and local governments; broadly communicates EPA's mission; assists in public awareness of environmental issues; and informs EPA employees of important issues that affect them. Annually, OPA issues nearly 1,500 press releases; responds to approximately 8,000 media inquiries; and oversees more than 150 audio-visual productions, 500 graphic productions, 2,700 event photographs, and 40 portraits. In addition, in terms of digital media, OPA receives over 160 million impressions on the internet, including www.epa.gov and EPA social media accounts, and posts nearly 100 unique EPA homepage internet news banners. Also, to facilitate communications with EPA employees nationwide, OPA annually posts over 200 intranet banners; issues 48 issues of a weekly e-newsletter - *This Week @ EPA* - with a total of 240 articles; and sends more than 100 agencywide employee Mass Mailers from EPA's Administrator, Deputy Administrator, and other

senior leaders. In FY 2023, OPA will continue to inform the media of agency initiatives and deliver timely, accurate information. The Office will continue to update the Agency's internet site to provide stakeholders with transparent, accurate, and comprehensive information on EPA's activities and policies. OPA will continue using social media, multimedia, and new media tools to provide stakeholders with information. The Office also will work with EPA's programs and regional offices to improve employee communication; external communication on relevant environmental and human health risks; collaboration and engagement with internal and external stakeholders; updates to the Agency's intranet site; and the use of other communication tools.

OPA also is responsible for ensuring that EPA carries out effective risk communication by sharing critical information on how we are addressing human health and environmental risks with the American public, communities, public officials, and other stakeholders in a way that it is tailored to their needs, reaching a wide audience, and providing meaningful actions they can take to reduce risk. This is integral to most of the work done across the Agency's offices and regions and is essential to carrying out EPA's mission of protecting human health and the environment.

Currently, we are working to ensure that risk communicators at the Agency are connected to best practices from the field, high quality training opportunities, and agencywide efforts underway to improve risk communication. Further, EPA regularly faces intractable risk communication issues that often need sustained focus by highly trained staff who can apply evidence-based practices. Addressing these issues and meeting the challenges of the future requires creating sustained culture change, building agency knowledge and a robust community of practice, and developing strong relationships with the academic community and our federal, state, and tribal partners.

In FY 2023, the Agency will continue to strengthen EPA's ability to carry out effective and consistent risk communication and position the Agency to meet the risk communication challenges of the future by:

- (1) Significantly expanding training across the Agency and with its partners, to create a community of practice and increase staff knowledge in a meaningful and sustainable way. This will increase the number of staff at the Agency and among partners who are using the same best practices in their risk communication efforts while at the same time building a network of staff located across all regions and offices who are well-positioned to share their risk communication expertise.
- (2) Launching an internal risk communication fellowship program to increase EPA's progress on the most difficult risk communication issues. The fellowship program will be open to EPA employees and will provide 10 weeks of intensive risk communication study and training followed by 10 to 13 weeks of applying the knowledge gained to an intractable risk communication problem facing the home office or region.
- (3) Developing academic partnerships to study EPA's risk communication challenges and improve the Agency's reliance on evidence-based practices. This includes increasing research partnerships to develop a research portfolio with the explicit goal of studying EPA-relevant risk communication questions, and then translating findings into usable tools, applications, and best practices for use across the Agency.

In FY 2022, the President's Task Force on Environmental Health Risks and Safety Risks met, and the Lead Subcommittee focused on the next generation all of government approach to reducing exposures to lead, asthma disparities and addressing climate change, disasters and emergencies. There is an opportunity to improve the environmental education and training of healthcare providers and medical professionals in identifying and communicating the causes and impacts of childhood lead exposure in underserved communities in an effort to prevent and reduce exposures. The Agency requests an additional \$5.49 million for these efforts. EPA will work with healthcare providers and families to address this problem directly to prevent and reduce exposure to lead. To further support the Administration's Lead Exposure Reduction Initiative, and in coordination with EPA's program and regional offices, in FY 2023, the Agency will continue to lead ongoing efforts to: 1) strengthen EPA's communications with the public on the risks of lead exposure by working with external leaders in the field to build upon the way the Agency conducts its outreach; and 2) leverage EPA's existing relationship with Pediatric Environmental Health Specialty Units (PEHSUs)¹¹⁴ to enhance and support training of healthcare providers in underserved communities to prevent and reduce children's exposure to lead.

There are several unique risk communication challenges regarding lead, but also unique assets for the Agency to deploy to reduce risk to the American public—especially to children. Lead exposure to children can result from multiple sources and can cause irreversible and life-long health effects. There is no level of lead exposure which is safe. This means that anything the Agency can do to reduce exposure and lower children's blood lead levels will lead to significant improvements in public health and brighter, more productive futures for America's children. In FY 2023, EPA will facilitate interagency coordination under the auspices of the Lead Exposures Subcommittee of the Presidential Task Force on Environmental Health Risks and Safety Risks to Children around childhood lead exposures and related effects, including research activities and sharing information with the public, to better understand and prevent disease and disability. The specific goals for FY 2023 include: recommending coordinated federal strategies to prevent lead exposure and associated effects; disseminating information to diverse audiences, including policy makers, health care providers, the general public, and other stakeholders; and coordinating and disseminating an inventory of federal actions to reduce childhood lead exposures.

Activities related to enhancing training of healthcare providers in underserved communities will include expanding ongoing PEHSU activities with an increased focus on enhancing the education provided to medical professionals on how to identify causes and impacts of childhood lead exposure; and working with health care providers and families to address this problem directly in an effort to prevent and reduce exposure to lead.

As the central mission support administrative management component of the Administrator's Office (AO), the OAES provides advice, tools, and assistance to the AO's programmatic operations across 11 offices. In FY 2023, OAES will continue to conduct the following mission support functions: human resources management, budget and financial management, information

¹¹⁴ Pediatric Environmental Health Specialty Units (<https://www.pehsu.net/>) provide expert information, training and consultation for health care professionals and the public on evidence-based prevention, diagnosis, management, and treatment of children's environmental health conditions. The PEHSU Program increases the ability of the general public to take simple steps to reduce harmful exposures by raising awareness among parents, school officials and community leaders.

technology and security, outsourcing, facilities management, and Government Accountability Office/Office of the Inspector General audit management.

In FY 2023, OEX will continue to provide critical administrative support to the Administrator, Deputy Administrator, Chief of Staff, senior agency officials, and staff to comply with the statutory and regulatory requirements under the Federal Records Act, FOIA, Plain Writing Act, and related statutes and regulations. OEX will continue to manage the AO's correspondence management, records management, Privacy Act implementation, and FOIA response activities. In FY 2022, the Office deployed a new enterprise correspondence tracking and workflow management application that is used by all EPA programs, regions, and labs. The application replaced the legacy Correspondence Management System, which provided paperless workflow, tracking and records management capabilities to agency staff since FY 2004. The new application seamlessly integrates with current information technology platforms, including Microsoft Outlook and Office, and will offer increased functionality and ease of use.

OEX also will revise EPA's Correspondence Manual (Publication 1322) to reflect current best practices, update stylistic and grammatical policies, and improve communications using plain language and gender inclusivity. The effort will include consultations with EPA's programs and regions as well as close coordination with the Office of Public Affairs.

Other OEX responsibilities include processing correspondence for the Administrator and Deputy Administrator; reviewing and preparing documents for their signature; managing the Administrator's primary email account; serving as custodian of the Administrator's, Deputy Administrator's, and IO senior officials' records; overseeing the records management program for all AO staff offices; and reviewing and issuing ethics determinations for gifts received by the Administrator and Deputy Administrator. OEX also manages the privacy program for the AO and monitors, reviews, and audits AO systems of records. Finally, OEX manages FOIA-related operations for the AO and responds to all requests for records held by any of the AO's five associate administrator offices, six staff offices, and the Immediate Office of the Administrator. OEX closed 414 FOIA requests in FY 2021 and has succeeded in reducing its backlog of open requests from 730 at the beginning of the fiscal year to 668. The pace of incoming requests remained high during the Presidential transition, with nearly 300 new requests, many of which are complex and seek significant volumes of records.

In FY 2023, OPEEE will continue providing advice to the Administrator and senior staff on activities surrounding different stakeholder groups, including generating and distributing outreach plans for most regulatory actions. Such plans often include meeting regularly with stakeholder groups to communicate the Administration's agenda at EPA; providing advance notification communications to relevant stakeholder groups on upcoming regulatory actions; facilitating in-state visits by the Administrator and/or senior staff to collect regulatory feedback; communicating key dates to stakeholders pertaining to opportunities to comment on EPA rulemakings; and organizing conference calls on regulatory topics with impacted stakeholders.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$3,071.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$5,490.0 / +20.0 FTE) This program change is an increase to support engagement with state and local partners, enhanced training of healthcare providers in underserved communities on the prevention, diagnosis, management, and treatment of children's exposure to lead, and increased funding to implement and strengthen the Agency's ability to carry out effective risk communication. This investment includes \$3.6 million in payroll.
- (+\$5,409.0 / +9.0 FTE) This program change is an increase to restore core capacity to the Executive Management and Operations Program and provide contract support for the Agency's management operations and multi-media and risk communications. This investment includes \$1.6 million in payroll.
- (+\$2,450.0 / +8.0 FTE) This program change is an increase to support evidence building activities in support of the Foundations for Evidence-Based Policymaking Act of 2018. This investment includes \$1.4 million in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Environmental Research, Development, and Demonstration Authorization Act (ERDDAA).

Small Business Ombudsman

Program Area: Information Exchange / Outreach
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$1,250</i>	<i>\$1,778</i>	<i>\$2,183</i>	<i>\$405</i>
Total Budget Authority	\$1,250	\$1,778	\$2,183	\$405
Total Workyears	3.3	4.6	5.6	1.0

Program Project Description:

The Small Business Ombudsman Program includes the Asbestos and Small Business Ombudsman (ASBO),¹¹⁵ housed within the Office of Small and Disadvantaged Business Utilization (OSDBU). It also includes the Small Business Advocacy Chair and other small business activities located in the Office of Policy's Office of Regulatory Policy and Management.¹¹⁶ The Program provides a comprehensive suite of resources, networks, engagement opportunities for training and advocacy on behalf of small businesses, and leads EPA's implementation of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act.

The ASBO Program operates through two roles: EPA's Asbestos Ombudsman and EPA's Small Business Ombudsman. The Asbestos Ombudsman role services a toll-free hotline, functioning as an informational liaison and guide in responding to asbestos-related questions and concerns. The Small Business Ombudsman role provides informal guidance and support in regulatory compliance assistance for small business in the rulemaking process. The ASBO Program advocates and partners with a variety of internal and external stakeholders, including EPA programs and regional offices, State Small Business Environmental Assistance Programs (SBEAPs),¹¹⁷ the U.S. Small Business Administration's Office of Advocacy, and Office of the National Ombudsman, as well as numerous local and national small business trade associations. ASBO's partnerships help advocate for the small business perspective, serving as a conduit of information, and offering a distinct perspective to help achieve better regulatory compliance and improved environmental outcomes.

Overall, the core functions of the ASBO include: providing access to information, training and resources that may assist small businesses in complying with EPA regulations; assisting EPA's program offices with analysis and consideration of their regulatory impacts on small businesses; supporting small entity engagement activities in evaluating upcoming environmental rules; ensuring oversight of EPA's asbestos and small business assistance programs; and serving as an informational liaison to the public and small business by operating the ASBO hotline. Based on

¹¹⁵ For more information, please see: <https://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman>.

¹¹⁶ For more information, please see: <https://www.epa.gov/aboutepa/about-office-policy-op#ORPM>.

¹¹⁷ For more information, please see: <https://nationalsbeap.org/>.

the Agency's overall small business regulatory and environmental compliance assistance efforts, EPA has earned a grade of "A" in the last 15 Small Business Administration (SBA) Office of the National Ombudsman Annual Reports to Congress.¹¹⁸

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

Consistent with EPA's priorities for addressing climate change, equity, and Environmental Justice (EJ) in FY 2023, the ASBO will:

- Finalize and launch a new strategy to better leverage the ASBO's statutory monitoring and reporting responsibilities to achieve mission outcomes. Under the 1986 Asbestos Hazard Emergency Response Act (AHERA) (15 U.S.C. §2641-2656) and the 1990 Clean Air Act (CAA) Amendments, Small Business Stationary Source Technical and Environmental Compliance Assistance Program (42 U.S.C. §7661f), the ASBO is required to monitor and report on the effectiveness of EPA's asbestos and small business compliance assistance programs. The ASBO's monitoring and reporting strategy will provide an efficient and effective process for collecting and analyzing program performance, as well as assist in developing findings and value-added recommendations to ensure program effectiveness. The new strategy's more agile and program centric monitoring and reporting approach will help expand public access to asbestos-related information, strengthen collaboration with state SBEAP providers, and enhance support to small entities to improve their environmental performance and compliance.
- Enhance the engagement of SBEAP stakeholders in EPA's EJ efforts. The National SBEAPs recently developed an Environmental Justice Subcommittee that is aimed at supporting the implementation of *Executive Order (EO) 14008 Tackling the Climate Crisis at Home and Abroad*.¹¹⁹ In FY 2023, the ASBO will support the EJ Subcommittee's efforts through the ASBO's five-year cooperative agreement, providing expanded training, technical assistance, and other EJ related activities to fully engage with small businesses located or operating within EJ communities. Through the cooperative agreement, the ASBO also will continue enhancing the newly updated www.nationalsbeap.org website, including expanding the dedicated foreign language page for non-English speaking small businesses to access environmental assistance resources.
- Continue to strengthen access to environmental compliance assistance resources and stakeholder collaboration through direct hotline assistance and small business outreach or engagement activities designed to assist overburdened and marginalized small business stakeholders. The Program will continue to support EPA program and regional office communication with small businesses by developing compliance assistance best practice tools and resources tailored to the unique needs of small businesses. Resources will include

¹¹⁸ For more information, please see: https://www.sba.gov/sites/default/files/2021-01/SBA_Annual_Report_2019-508.pdf

¹¹⁹ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

templates for compliance assistance guides, fact sheets, FAQs, webinar and training announcements, and other targeted small business communication tools. Additionally, the ASBO will procure subscription services that will improve and expand its monthly newsletter distribution and communication to the small business community.

- Foster stronger partnerships with ASBO stakeholders, including state compliance assistance programs, small business trade associations, and other EPA regional offices to increase collaboration with underserved communities. To best support this engagement in accordance with EO 13985,¹²⁰ the ASBO will offer EPA rule writers professional coordination and facilitated engagement support services to allow for early listening and collaboration for specialized consideration and attention to the interests of small and disadvantaged businesses.
- Enhance underserved community engagement through the ASBO's newly expanded cooperative agreement for the National Small Business Environmental Assistance Program, which facilitates state and national collaboration on small businesses environmental assistance services. This ASBO-funded cooperative agreement will support the expansion of the National SBEAP website¹²¹ and other collaboration tools, including a new compliance assistance web-resource, dedicated to non-English speaking small businesses to ensure that environmental assistance resources are available and understood by those traditionally underserved. Additionally, the cooperative agreement will allow for financial support in hosting and managing compliance assistance training events to better collaborate with the states.
- Implement a new ombudsman monitoring and reporting process to comply with both the Asbestos Ombudsman's and Small Business Ombudsman's statutory requirements. A new, less burdensome, and more agile data collection mechanism will be deployed to help monitor and periodically report on the effectiveness of the asbestos hotline services and the small business environmental assistance programs under the 1990 CAA Amendments.
- Convene multiple Small Business Advocacy Review Panels to inform the development of EPA rules, particularly those undertaken pursuant to the revised Toxic Substances Control Act (TSCA). Revised TSCA requirements have resulted in a considerable increase in the number of Small Business Advocacy Review Panels being initiated by the Agency.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

¹²⁰ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

¹²¹ For more information, please see: www.nationalsbeap.org.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$38.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$367.0 / +1.0 FTE) This program increase will support core operations in EPA's Small Business Ombudsman Program. This investment includes \$193.0 thousand in payroll.

Statutory Authority:

Asbestos Hazard Emergency Response Act (AHERA), 1986 (adding Title II to the Toxic Substances Control Act (TSCA)) (15 U.S.C. §2641-2656); Clean Air Act, Title 5, Section 507; Small Business Stationary Source Technical and Environmental Compliance Assistance Program (42 U.S.C. §7661f); Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, as amended by Pub. L. 110-28; Small Business Paperwork Relief Act, 44 U.S.C. 35; 42 U.S.C. § 7661f; and 15 U.S.C. §§ 2641-2656.

Small Minority Business Assistance

Program Area: Information Exchange / Outreach
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$1,756</i>	<i>\$1,680</i>	<i>\$1,935</i>	<i>\$255</i>
Total Budget Authority	\$1,756	\$1,680	\$1,935	\$255
Total Workyears	8.5	7.6	7.6	0.0

Program Project Description:

EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) manages the Agency's Small Business Contracting Program mandated under Section 15(k) of the Small Business Act, 15 U.S.C. § 644(k). As prescribed under that section, the Program provides expertise in ensuring small business prime and subcontracting opportunities to help promote procurement equity and expand EPA's competitive supplier base in carrying out the Agency's mission. Under the Program, OSDBU provides EPA's contracting community statutorily required counseling and training on all aspects of governing small business requirements throughout the federal acquisition cycle. It also engages in statutorily mandated advocacy on behalf of the various categories of small businesses, including disadvantaged businesses; small businesses located in Historically Underutilized Business Zones (HUBZones); service-disabled veteran-owned small businesses (SDVOSBs); and women-owned small businesses (WOSBs). In accordance with Section 15(k), OSDBU further hosts or participates in an average of one small business outreach and training conference each month, providing needed technical assistance to hundreds of small and disadvantaged businesses across the country.

In implementing the statutory responsibilities required under Section 15(k), OSDBU reviews acquisition strategies to maximize small business prime and subcontracting opportunities; provides expertise in conducting market research for EPA acquisitions; performs contract bundling reviews to avoid unnecessary or unjustified limitations on small business utilization; reviews purchase card transactions within the statutory threshold; and evaluates large prime contractor subcontracting plans. In addition, OSDBU assists in the coordination of unsolicited proposals for agency acquisitions and in the resolution of small business payment issues under EPA acquisitions. It further provides a broad range of training, outreach, and technical assistance to new and prospective small business contract awardees. Historically, data reported in the Federal Procurement Data Systems (FPDS) indicates that the EPA awards an average of 40 percent of total acquisition dollars to small businesses annually – far exceeding the government-wide goal of 23 percent. Based on the Agency's record of excellence in affording small business contracting opportunities, the EPA is one of a handful of federal agencies that has earned an "A" on the last 12 Small Business Procurement Scorecards administered by the U.S. Small Business Administration (SBA).¹²²

¹²² For more information, please see: <https://www.sba.gov/sites/default/files/2021-07/EPA-508.pdf>.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

Consistent with EPA's priorities to advance Environmental Justice (EJ) and support to underserved communities, and to expand the country's domestic markets and capabilities, in FY 2023, the Program will:

- Develop a more targeted and data-driven outreach strategy to diversify the Agency's supplier base and optimize opportunities for socially and economically disadvantaged businesses. In FY 2023, OSDBU will build on its successful deployment of a new electronic vendor profile database to serve as a central repository of small businesses registered as ready, willing, and able to do business with EPA. OSDBU will continue efforts to expand the number of qualified small business vendors registered in the database. It will further customize the database and develop processes, procedures, and training for its utilization across EPA. The database will be used as a tool to match available socioeconomic sources and solutions with EPA procurement opportunities and outreach activities. This will include procedures for efficient and effective electronic dissemination of procurement and outreach information and a searchable functionality by EPA common spend categories. Additionally, OSDBU will develop a user guide and market the database to the broader federal contractor community to facilitate their identification of small and disadvantaged businesses for potential teaming and formal Mentor Protégé arrangements to perform EPA contract requirements. This will help the Agency and the contractor community maintain and connect with a diverse and robust small business vendor base capable of meeting the Agency's mission needs. It also will leverage technology to simplify market research and acquisition planning, thereby reducing the procurement action lead time.
- Partner with program offices to develop strategies for enhancing socioeconomic small business utilization in targeted categories of acquisitions through a combination of specifically tailored market research and leveraging of EPA technology solutions, such as the Cleanups in My Community (CIMC) Map and EJ Screening Tool. This will enable EPA to better leverage acquisition as a catalyst for advancing equity and economic development in marginalized communities.
- Expand EPA online acquisition resources and tools to provide technical assistance and support to small and disadvantaged businesses. EPA's procurement equity assessment and related industry listening sessions conducted in connection with Executive Order (EO) 13985,¹²³ and the subsequent Biden-Harris Administration Fact Sheet¹²⁴ issued on June 1, 2021, confirmed that small and disadvantaged businesses face unique challenges in navigating the federal acquisition landscape and accessing information on procurement

¹²³ For more information please see: <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

¹²⁴ For more information please see: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/>.

opportunities. To address those inequities, in FY 2023, OSDBU will enhance its public-facing website to provide value-added resources and tools to assist small businesses in doing business with EPA. The resources will consist of a range of technical assistance tools that will meet small and disadvantaged businesses where they are. Collectively, they will provide maximum flexibility for underserved communities and business owners to easily access and navigate the information at any time, and will include video training and messaging, guides, fact sheets, information on procurement opportunities, and relevant links that extend OSDBU's social media footprint. This will assist in leveling the playing field by connecting new and emerging federal contractors with information they need to improve their understanding of the federal marketplace and their competitiveness to win awards.

- Revamp the mechanism for requesting and conducting the required OSDBU review of EPA acquisitions above the Simplified Acquisition Threshold of \$250,000. In accordance with 15 U.S.C. § 644(k), this review is critical to verify that agency acquisitions are not unduly restrictive and that they provide the maximum practicable opportunity for small business participation. EPA conducted a procurement equity assessment following EO 13985 and identified the complexity of the federal acquisition process as a barrier to increasing small business utilization in federal acquisitions. In FY 2021, OSDBU instituted a new quarterly eLearning Power Hour to provide targeted training and education to the EPA acquisition community. In an effort to simplify the application of governing small business contracting requirements in structuring procurements, in FY 2023, OSDBU will launch a new fillable electronic form to guide and document the consideration of small business solutions in structuring EPA acquisitions. The new form will incorporate a streamlined decision tree, with guided logic to ensure contracting and program official compliance with governing requirements. It also will simplify OSDBU's review to ensure the maximum practicable small business opportunities in accordance with applicable law and Administration priorities.
- Expand EPA outreach activities to promote mentoring and teaming opportunities for new and less experienced small business contractors. Many small businesses have long complained that their lack of an extensive past performance record as a federal prime contractor effectively forecloses their ability to successfully compete for federal prime contracts. In FY 2023, OSDBU will develop and conduct targeted outreach activities to connect small business vendors with more seasoned contractors to enhance their experience, capabilities, and past performance record. The outreach will help build a diverse pipeline of small and disadvantaged business contractors by facilitating opportunities for teaming relationships through joint ventures, subcontracts, and the SBA All Small Mentor Protégé Program.

Performance Measure Targets:

(PM SB1) Percentage of EPA contract spending awarded to HUBZone businesses.	FY 2022 Target	FY 2023 Target
	3	3.2

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$199.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$56.0) This program change increases resources to help promote procurement equity through the Agency's Small Business Contracting Program.

Statutory Authority:

15 U.S.C § 644(k).

State and Local Prevention and Preparedness

Program Area: Information Exchange / Outreach

Goal: Safeguard and Revitalize Communities

Objective(s): Prepare for and Respond to Environmental Emergencies

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$13,402</i>	<i>\$13,736</i>	<i>\$22,908</i>	<i>\$9,172</i>
Total Budget Authority	\$13,402	\$13,736	\$22,908	\$9,172
Total Workyears	60.7	63.1	93.1	30.0

Program Project Description:

The State and Local Prevention and Preparedness Program establishes a structure composed of federal, state, local, and tribal partners who work together with industry to protect emergency responders, local communities, facility workers, the environment, and property from chemical accident risks through accident prevention and emergency response programs, community and facility engagement, and improved safety systems. This framework provides the foundation for community and facility chemical hazard response planning, and reduction of risk posed by chemical facilities.

Under Section 112(r) of the 1990 Clean Air Act (CAA) Amendments, chemical facilities that store more than a threshold quantity of listed extremely hazardous substances are required to implement a Risk Management Plan (RMP) program. These facilities, known as RMP facilities, take preventive measures, report data, mitigate and/or respond to chemical releases, and work with communities, response, and planning groups to increase understanding of risks.¹²⁵

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was enacted to help communities plan for chemical emergencies and to inform the public about chemicals in their community. Under EPCRA, facilities are required to report about the chemicals they produce, use, and store to state and local governments. States, tribes, and local governments use this information to prepare communities for potential chemical releases from these facilities through the development of local emergency response plans.¹²⁶

Under Section 311(j)(5) of the Clean Water Act (CWA), EPA is required to issue regulations requiring certain facilities to develop plans to respond to worst case discharges of hazardous substances that could threaten navigable waters.

¹²⁵ For additional information, please refer to: <https://www.epa.gov/rmp>.

¹²⁶ For additional information, please refer to: <https://www.epa.gov/epcra>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.3, Prepare for and Respond to Environmental Emergencies in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the State and Local Prevention and Preparedness Program will perform the following activities:

- Support inspection of RMP and EPCRA facilities to ensure compliance with accident prevention and preparedness regulations and work with chemical facilities to reduce chemical risks and improve safety. There are approximately 12,000 chemical facilities that are subject to the RMP regulations. Of these, approximately 1,800 facilities have been designated as high-risk based upon their accident history, quantity of on-site dangerous chemicals stored, and proximity to large residential populations.¹²⁷ EPA prioritizes inspections at high-risk facilities. Using the additional funding and FTE provided for FY 2023, the Program will conduct an additional 150-200 inspections and provide compliance assistance at RMP and EPCRA-regulated facilities, checking measures to prevent chemical accidents. EPA will focus on high-risk facilities located in communities with environmental justice concerns and communities with increased climate-related risks (*e.g.*, extreme weather, flooding, wildfires, *etc.*).
- Protect fenceline communities through regulatory updates and increased outreach, compliance assistance, and inspections at regulated facilities, thereby reducing risks to human health and the environment by decreasing the likelihood and impacts of chemical accidents. EPA requests \$8.2 million and 30.0 FTE to support these efforts in this program.
- Provide basic and advanced RMP and EPCRA inspector training for federal and state inspectors.
- Maintain and upgrade the RMP national database, which is the Nation's premier source of information on chemical process risks and contains hazard information on all RMP facilities. Industry electronically submits updated RMPs to this secure database. Using additional funding requested in FY 2023, EPA will initiate improvements to the RMP national database to accommodate new risk management plan submission elements resulting from ongoing regulatory changes and provide increased public access to non-sensitive portions of the RMP database and resulting analytics.
- Develop updates to the Computer-Aided Management of Emergency Operations (CAMEO) software suite (*i.e.*, the CAMEO Chemicals, CAMEO*fm*, Areal Locations of Hazardous Atmospheres and Mapping Application for Response, Planning, and Local Operational Tasks applications), which provides free and publicly available information for firefighting, first aid, emergency planning, and spill response activities.

¹²⁷ Located in the EPA RMP database.

- In accordance with the direction in Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*,¹²⁸ continue the Agency's review of the final RMP Reconsideration rule (84 FR 69834) and publish proposed and final rules to rescind or revise the action and address Administration priorities on environmental justice and climate change.
- Under Section 311(j)(5) of the CWA, EPA will develop regulations requiring certain facilities to develop plans for responding to a worst-case discharge, or to a substantial threat of such a discharge, of CWA-listed hazardous substances.
- Conduct outreach to regulated industry concerning changes or updates to RMP and EPCRA regulations and interpretive guidance.

Performance Measure Targets:

Work under this program directly supports performance results in the Superfund: EPA Emergency Preparedness program under the Superfund appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$464.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$8,208.0 / +30.0 FTE) This program change is an increase to support a multi-pronged approach to protect fenceline communities at risk from nearby chemical facilities, including providing increased outreach and inspections at regulated facilities to ensure facilities have measures in place to prevent chemical accidents. This investment includes \$4.96 million in payroll.
- (+\$500.0) This program increase is to upgrade and to support operations and maintenance of the existing RMP database.

Statutory Authority:

The Emergency Planning and Community Right-to-Know Act (EPCRA); the Clean Air Act (CAA) § 112(r); Clean Water Act (CWA) § 311(j)(5).

¹²⁸ For additional information, please refer to: <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

TRI / Right to Know

Program Area: Information Exchange / Outreach

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Promote Pollution Prevention

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$12,689</i>	<i>\$13,206</i>	<i>\$13,675</i>	<i>\$469</i>
Total Budget Authority	\$12,689	\$13,206	\$13,675	\$469
Total Workyears	38.5	37.0	37.0	0.0

Program Project Description:

EPA's success in carrying out its mission to protect human health and the environment is contingent on collecting and making available to the public timely, accurate, and relevant information. The Toxics Release Inventory (TRI) Program¹²⁹ supports EPA's mission by annually collecting and publishing for the public: release, other waste management (e.g., recycling), and pollution prevention (P2) data on TRI-listed chemicals and chemical categories that include almost 200 per- and polyfluoroalkyl substances (PFAS).¹³⁰ Approximately 21,000 industrial and federal facilities report to TRI annually. The TRI Program is a premiere source of cross-media toxic chemical release information for communities, non-governmental organizations, industrial facilities, academia, and government agencies at the local, state, tribal, federal, and international levels. Using technological advances, the TRI Program has developed several analytical tools that provide the public with easy access, mapping, and analysis of information on TRI chemicals released or otherwise managed as waste at facilities in communities across the United States and its territories. Some of these tools incorporate demographic indicators such as low income, people of color, education level, linguistically isolated households, and young and elderly populations, as well as tribal land flags and risk indicators.

The Program collaborates with other EPA programs on sector analyses to describe relevant trends in pollutant releases, waste management, and P2 practices with respect to toxic chemicals and to support innovative approaches by industry and other partners to reduce pollution. As a robust, community-focused, annual, cross-media data set on toxic chemical information, the TRI lends itself to comparative analyses with other program-specific data managed by the Agency, providing insights that may not be apparent when viewing the data sets independently. Such insights are especially valuable when it comes to: (1) identifying opportunities based on TRI-reported, location-specific release trends to reduce toxic chemical releases in overburdened and underserved communities in accordance with the Administration's environmental justice (EJ) priorities, and (2) promoting TRI-reported P2 practices that reduce the release of toxic chemicals and/or emissions

¹²⁹ For additional information, please visit: <http://www.epa.gov/tri/>.

¹³⁰ Many per- and polyfluoroalkyl substances (PFAS) were added to the TRI chemical list as a component of the National Defense Authorization Act for Fiscal Year 2020 (NDAA) when the Act was signed into law on December 20, 2019. The first year of TRI reporting these PFAS was calendar year 2020.

of greenhouse gases (GHGs). The TRI serves as a central component of EPA's strategy to increase access to environmental pollution information and enable communities, scientists, policymakers and other stakeholders to apply the information in their decisions and engagements to address impacts and deter adverse burdens, particularly to low-income and marginalized communities.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.2, Promote Pollution Prevention in the *FY 2022 – 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to enhance the regulatory foundation of TRI to ensure that communities have access to timely and meaningful data on toxic chemical releases and other waste management and pollution prevention activities at facilities. As part of this effort, the TRI Program will continue to clarify toxic chemical reporting requirements, pursue additional chemical listings, expand the scope of industry coverage, respond to petitions, improve the reporting experience, take steps to further optimize the quality of TRI data, explore enhanced access and analytical capability with respect to this valuable information, identify opportunities to reduce toxic chemical releases, and share and promote pollution prevention approaches with industry. This work is in support of the Administration's EJ priorities as the Program also will play an enhanced role in conducting analyses to support EPA's goals for overburdened and underserved communities with EJ concerns. Additionally, the Program will work to identify instances where TRI-reported P2 practices reduce releases of TRI-listed toxic chemicals and/or GHGs in alignment with the Administration's climate priorities.

EPA also will continue to provide reporting facilities with its online reporting application, *TRI-MEweb* ("*TRI Made Easy web*" reporting tool), to facilitate the electronic preparation and submission of TRI reports through EPA's Central Data Exchange (CDX),¹³¹ which manages TRI access and authentication services and provides identity proofing for reporting facilities. *TRI-MEweb* has built-in functionality that helps to prevent facilities from making reporting errors. In addition, the TRI data collected by EPA are shared with states, tribes, and territories that are partners of the TRI Data Exchange (TDX).¹³² EPA will continue to maintain *TRI-MEweb* and the TDX throughout FY 2023. The Agency also will continue to support the TRI Processing System (TRIPS) database, which is the repository for TRI data. As a key element of its data quality assurance strategy, in FY 2023, the Program will conduct at least 600 data quality checks to help optimize the accuracy and completeness of the reported data and thereby improve the Program's analyses and the utility of the data to the public. In FY 2023, EPA also will continue to improve its systems, processes, and products based on feedback from users (*i.e.*, communities; academia; industry; and state, tribal and local governments).

The Program also will continue to publish English and Spanish versions of the annual *TRI National Analysis*,¹³³ which describes relevant trends in toxic chemical releases and waste management practices and highlights innovative approaches by industry to reduce pollution. The Analysis will include industry sector profiles, parent company analyses, and TRI information reported from

¹³¹ To access the CDX, please visit: <https://cdx.epa.gov/>.

¹³² For additional information, please visit: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-exchange>.

¹³³ To access the *TRI National Analysis*, please visit: <https://www.epa.gov/trinationalanalysis>. EPA publishes each National Analysis approximately six months after that year's data are reported.

facilities in specific urban communities, watersheds, and tribal lands. The TRI Program also will continue to make the preliminary data available to the public shortly after the reporting deadline as downloadable data files and through online analytical tools such as *Envirofacts*.¹³⁴ The Program will continue to provide support to EPA's Enforcement and Compliance Assurance programs by supplying facility target lists developed through the comparison of TRI reporting with facility reporting to other EPA programs (e.g., air permits required by the Clean Air Act). The TRI Program will continue to foster discussions and collaborations in analyzing and using its data with stakeholders such as industry, government, academia, non-governmental organizations, and the public. Engagement will include organizing targeted webinars, and, if resources permit, hosting a TRI National Conference and launching a TRI University Challenge.

Section 7321 of the National Defense Authorization Act of 2020 requires EPA to assess certain Per- and Per-fluoroalkyl Substances (PFAS) to determine whether they meet Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 chemical listing criteria. During FY 2023, EPA will continue to assess these chemicals and develop associated hazard assessments to support any chemical listing activities. Further, in FY 2023, the TRI Program's information, data and analyses will support the Toxic Substances Control Act (TSCA) Program, helping to identify conditions of use and evaluate and estimate occupational, general population, and potentially exposed and susceptible subpopulation exposures for those chemicals undergoing risk evaluation and that are included on the TRI chemical list. This work altogether will assist Agency chemical programs in their prioritization work, from the identification of candidate chemicals for future risk evaluations to the support of other chemical assessments across program and regional offices, advancing the work of chemical safety agency-wide.

The TRI Program will additionally pursue chemical listings, including TSCA Work Plan chemicals and other substances of interest to the Agency that are not included on the TRI chemical list, as well as respond to TRI chemical listing petitions. Additional chemicals or sectors may be assessed for TRI listing suitability and associated listing actions, and as required by EPCRA, the Agency will respond to EPCRA chemical petitions regarding TRI within 180 days after receipt.¹³⁵ The quantity and complexity of petitions are unknown until submitted to EPA. EPA will continue with TRI rulemakings associated with two chemical petitions received during prior years and will respond to any chemical petitions received during FY 2023.

Because electronic systems that collect and disseminate TRI data largely have been developed, FY 2023 work will focus on the operations and maintenance of *TRI-MEweb*, TRIPS, and processes that contribute to quality control in the development of the annual *TRI National Analysis*. By leveraging agency cloud services, the TRI systems will improve system performance, reliability, efficiencies, portability, and administrative services (security, upgrades, patches, etc.). This also will improve integration/consistency with other cloud-based systems and applications and will provide quicker data processing. Moreover, this will enhance the capabilities of EPA's public-facing TRI analytical tools.

¹³⁴ *EnviroFacts* may be accessed at: <https://enviro.epa.gov/>.

¹³⁵ Additional information on current petitions may be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/toxics-release-inventory-laws-and-regulatory-activities>.

In FY 2023, the TRI Program will analyze and identify facilities and sectors releasing TRI-listed substances proximal to overburdened and underserved communities (using functionalities within EPA's analytical tools, such as TRI Toxics Tracker and *EJScreen*). The Program also will develop maps and other products to help facilitate exploration and understanding of potential impacts from chemical releases to surrounding communities including those that might be more susceptible to climate change impacts (i.e., sea level rise). TRI will initiate this work for at least two EPA Regions and will provide outreach and training in how to use and interpret the information within those locations.

Additionally, TRI reporting includes information on institutional/firm environmental stewardship, P2, and other sustainability practices and activities (e.g., voluntary climate mitigation-, adaptation- or resilience-oriented work) undertaken by facilities during the reporting year. TRI's P2 reporting data¹³⁶ include thousands of instances of source reduction implementation and other sustainability activities by facilities, which often reflect economic benefits coupled with improved environmental performance. TRI's P2 data tools have a wide range of capabilities to help identify and amplify improvement to environmental practices, and the Program will continue to conduct analyses of these practices and develop profiles of these environmental improvements, which can be useful for P2 practitioners including those seeking to advance sustainability and strengthen the resilience of facilities near overburdened and underserved communities with EJ concerns. The Program will also continue to support the Agency's P2 Program, and other agency source reduction and sustainability programs, specifically efforts to advance P2 best practices among national emphasis areas including tools to advance priorities such as the P2-EJ Facility Mapping Tool.¹³⁷

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$442.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$27.0) This program change is an increase in contract resources to support IT analytical tools that allow stakeholders to view and analyze the data reported to TRI in support of environmental justice and other initiatives.

Statutory Authority:

Emergency Planning and Community Right-to-Know Act (EPCRA) § 313; Pollution Prevention Act of 1990 (PPA) § 6607.

¹³⁶ For additional information, please visit: <https://www.epa.gov/tri/p2>.

¹³⁷ To access the P2 EJ Facility Mapping Tool, please visit <https://www.epa.gov/p2/p2-ej-facility-mapping-tool>.

Tribal - Capacity Building

Program Area: Information Exchange / Outreach

Goal: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective(s): Promote Environmental Justice and Civil Rights at the Federal, Tribal, State and Local Levels

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$12,945</i>	<i>\$12,902</i>	<i>\$16,386</i>	<i>\$3,484</i>
Total Budget Authority	\$12,945	\$12,902	\$16,386	\$3,484
Total Workyears	72.8	75.6	87.9	12.3

Program Project Description:

EPA is responsible for protecting human health and the environment under federal environmental statutes. Under the Agency's 1984 Indian Policy,¹³⁸ EPA works with federally recognized tribes on a government-to-government basis, in recognition of the federal government's trust responsibility to tribes, to implement federal environmental programs in Indian country.

To do this, EPA will:

- use key environmental justice principles, such as, equity, meaningful involvement, and fair treatment as it prioritizes implementation of EPA directly implemented programs, and for other activities;
- fully consider ways in which program funding can best be used to address climate change concerns to build climate resiliency for federally recognized tribes, and;
- work to enhance the integration of tribal treaty rights and reserved rights into EPA decision-making and regulatory development.

This program also supports the Categorical Grant: Tribal General Assistance Grants Program.

EPA's American Indian Environmental Office leads the agencywide effort to ensure environmental protection in Indian country. Please see <http://www.epa.gov/tribal> for more information.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 2/Objective 2.1, Promote Environmental Justice and Civil Rights at the Federal, Tribal, State and Local Levels in the *FY 2022-2026 EPA Strategic Plan*.

¹³⁸ EPA Policy for the Administration of Environmental Programs on Indian Reservations, available at <https://www.epa.gov/tribal/epa-policy-administration-environmental-programs-indian-reservations-1984-indian-policy>.

Overall, the Agency continues to make steady progress towards strengthening human health and environmental protection in Indian country. EPA will further the following priorities in FY 2023:

- strengthening tribal partnerships and engagements, including through tribal consultation,
- building tribal capacity to administer and meaningfully participate in environmental programs,
- directly implementing programs in Indian country for equitable environmental protection, and
- enhancing the protection of tribal treaty rights in EPA activities.

Tribal Consultation: In working with the tribes, EPA follows its *Policy on Consultation and Coordination with Indian Tribes*.¹³⁹ The Consultation Policy builds on EPA's 1984 Indian Policy and establishes clear agency standards for a consultation process promoting consistency and coordination. From FY 2011 through FY 2022, EPA expects to complete over 860 Tribal Consultations, an important agency milestone under the EPA Tribal Consultation Policy. EPA anticipates completing 110 tribal consultations in FY 2023. In FY 2023, EPA will continue to support the Agency's web-based Tribal Consultation Opportunities Tracking System, a publicly accessible database used to communicate upcoming and current EPA consultation opportunities to tribal governments. The system provides a management, oversight, and reporting structure that helps ensure accountability and transparency.

Capacity Building: EPA will continue to provide assistance and to support mechanisms for tribes to pursue developing and implementing federal environmental programs, including the "treatment in a manner similar to a state" (TAS) process and the use of the Direct Implementation Tribal Cooperative Agreement (DITCA) authority. The Agency will continue to provide technical and financial assistance to ensure tribal governments have the opportunity to build the capacity to meaningfully participate and engage in environmental protection activities. As of March 2022, EPA has approved 100 TAS regulatory program delegations to tribes, including 21 approvals for compliance and enforcement authority. EPA had 16 DITCAs with tribes in place in FY 2022.

Indian Environmental General Assistance Program Capacity Building Support: General Assistance Program (GAP) grants to tribal governments help build the basic components of a tribal environmental program. The Agency manages GAP grants according to its *Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia*.¹⁴⁰ In FY 2023, EPA will continue to administer GAP financial assistance to build tribal capacity and address environmental issues in Indian country. EPA's work in FY 2023 also will continue to enhance EPA-Tribal partnerships through development and implementation of EPA-Tribal Environmental Plans (ETEPs) with a continued focus on tracking and reporting measurable results of GAP-funded activities. GAP funding also continues to support EPA Performance Partnership Grant (PPG) goals. EPA will strive to incorporate environmental justice and climate change considerations in these activities.

GAP Performance Measurement: In FY 2020, EPA completed an evaluation of the Program implementation under the 2013 GAP guidance and anticipates new Guidance to be effective FY

¹³⁹ Please refer to: <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

¹⁴⁰ Please refer to <https://www.epa.gov/tribal/2013-guidance-award-and-management-general-assistance-agreements-tribes-and-intertribal> for further information.

2023. EPA will adjust the performance management application to align with the revised guidance, after it is finalized in FY 2023, and begin compiling and analyzing data. The information technology-based performance application will provide a data-driven basis for supporting funding decisions, funding priorities, and contribute to program accountability.

Direct Implementation: In the absence of an authorized tribal program, EPA will continue to provide federal environmental program protections in Indian country by directly implementing programs. In FY 2023, EPA will continue to evaluate its direct implementation responsibilities and activities, on a program-by-program basis, in Indian country and make the data and information it relies upon available through EPA's EJScreen application.

Performance Measure Targets:

(PM EC41) Percentage of EPA Tribal consultations that may affect Tribal treaty rights that consider those rights as part of the consultation.	FY 2022 Target	FY 2023 Target
	20	25
(PM E21) Number of significant actions taken by EPA programs with direct implementation authority that will result in measurable improvements in Indian country.	FY 2022 Target	FY 2023 Target
	No Target Established	25

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,186.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,298.0 / +12.3 FTE) This program change is an increase in resources and FTE to support core work in the capacity building program with an emphasis on addressing the climate crisis. This investment includes \$2.171 million in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

International Programs

International Sources of Pollution

Program Area: International Programs

Goal: Tackle the Climate Crisis

Objective(s): Advance International and Subnational Climate Efforts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$6,409	\$6,746	\$11,758	\$5,012
Total Budget Authority	\$6,409	\$6,746	\$11,758	\$5,012
Total Workyears	29.6	32.4	39.4	7.0

Program Project Description:

The United States works with international partners to address global sources of pollution, including greenhouse gases, as well as the impacts of pollution from the United States on other countries and the global environment. International sources of pollution impact air, water, land, the oceans, food crops, and food chains. Healthy environments, ecosystems, and communities provide the foundation for protecting human health and the environment and creating sustainable economic development, job opportunities, and sustainable growth.

Tackling the Climate Crisis, Accelerating Environmental and Economic Justice

EPA works with international partners, such as foreign governments and international organizations, to deploy assistance that can strengthen on the ground action to tackle the climate crisis, reduce transboundary pollution that impacts local communities and travels through the environment to impact other communities across the globe, and that strengthen the fundamental environmental rule of law. These measures typically rely upon U.S. best practices, technical knowledge and expertise that promote U.S. priorities such as protecting underserved and vulnerable communities. EPA's international mission is essential to addressing transboundary pollution and adverse environmental impacts in the United States and helps facilitate a cleaner and healthier environment around the world. Strengthening environmental protection abroad so that it is on par with practices in the U.S. helps build a level playing field for industry and promotes opportunities for technologies and innovation. EPA's international programs also play an important role in fulfilling national security and foreign policy objectives and create a platform for promoting U.S. innovation and showcasing state and local breakthrough programs and policies.

An important example of this work is EPA's engagement in the Group of Seven (G7) and the Group of Twenty (G20) through environment ministerial meetings, which negotiate outcomes on key EPA issues such as climate change, food waste, marine litter, resource efficiency, and air quality. EPA's engagement with international financial institutions, United Nations (UN) entities, and the Organization for Economic Cooperation (OECD) has helped advance recognition of the critically important role of environmental factors, including air pollution and toxic chemicals, in the global burden of non-communicable diseases (NCDs), and of the role that sound environmental

laws can play in reducing these risks. Additionally, EPA's participation in the North American Commission for Environmental Cooperation (CEC) provides regional and international leadership to advance environmental protection, human health, and sustainable economic growth.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 1/Objective 1.3, Advance International and Subnational Climate Efforts in the *FY 2022 – 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to engage both bilaterally and through multilateral institutions to improve international cooperation to reduce greenhouse gases, increase resilience and adaptive capacity as well as prevent and address the transboundary movement of conventional pollution and waste.

Climate and Equity

Specifically, in line with the *FY 2022 – 2026 EPA Strategic Plan*, EPA will provide technical assistance through the transfer of tools to address climate change with partner countries, with the goal of leveling the playing field, addressing disproportionate adverse human health and environmental impacts in vulnerable and underserved communities, and helping to ensure that all countries make meaningful progress in implementing their nationally determined contributions under the Paris Agreement. This helps fulfill EPA's commitment to implementing, by 2026, at least 40 international climate engagements that result in an individual partner commitment or action to reduce greenhouse gas (GHG) emissions, adapt to climate change, or improve resilience in a manner that promotes equity. These actions will be consistent with EPA's draft International Climate Strategy Plan. Actions will include re-engaging the Secretariat of Partnership for Clean Fuels and Vehicles (PCFV) to identify project partners to assist in transitioning to electric mobility solutions in key countries, particularly in underserved and vulnerable communities, to finalize a high ambition workplan with the Secretariat. Additionally, EPA will initiate stakeholder consultations with key priority countries on critical mineral supply-chain transparency guidelines, focused on minerals needed for low carbon technology. For the pilot programs, EPA will provide meaningful technical assistance internationally on climate mitigation, adaptation, and resilience through expertise and capacity to key EPA partners and priority countries identified by the Biden-Harris Administration. This will enable countries to set and meet ambitious greenhouse gas reductions. In implementing these pilot programs, EPA will seek opportunities to engage with partner governments and organizations to develop and use best practices and tools to address the unique needs and challenges of vulnerable and underserved communities.

In FY 2023 the Agency will work in the Arctic Council to provide in-kind expertise and help to identify external resources to screen sources of black carbon that may impact local health conditions, with the potential of expanding across a wider range of Alaskan Native Villages (ANVs). EPA also will co-chair the Arctic Council expert group on short-lived climate pollutants (SLCP) to facilitate the development and implementation of projects to reduce SLCP emissions in and near the arctic. EPA also will continue to share Agency tools that can help partners increase their adaptive capacity to climate change and understand the impacts of climate change on

vulnerable and underserved communities through the UN Environment Program, the Global Adaptation Network and existing and new bilateral work programs.

Marine Litter

EPA will continue to engage internationally to prevent and reduce marine litter, including plastics, through sharing best practices and U.S. innovation as well as through existing or new global instruments. Marine plastic litter is an increasingly prominent global issue that can negatively impact water quality, tourism, industry, and public health in the United States. Further, calls for the development of a new binding international arrangement of marine plastic litter are mounting, and EPA, working with other federal departments, will continue to provide leadership and expertise on how to best address land-based sources of marine litter, including plastics. Since 80 percent of plastic marine litter comes from land-based sources of waste,¹⁴¹ countries with inadequate waste management contribute to the pollution in our shared oceans. Improving integrated waste management in these countries will be a priority.

In FY 2023, EPA will share tools and provide technical assistance, including through efforts related to Trash Free Waters, to key contributing countries in Asia and build on past projects in Latin America and the Caribbean. Technical support may include developing national, regional, and local action plans to reduce leakage of trash to the environment; identifying steps to implement relevant and applicable waste collection/management systems; and modest implementation projects where possible. In addition, EPA will support the development of an information clearinghouse on marine litter to be hosted by the United Nations Environment Program (UNEP). EPA will continue to collaborate with leaders in innovation in the domestic stakeholder community to identify ways to leverage efforts to tackle this pressing global problem. EPA will continue to strengthen actions with a regional focus on major source countries in Southeast Asia and key partners in Latin America and the Caribbean, and by partnering with UNEP leaders in implementing and disseminating governance measures, policies, and technology to prevent marine litter.

Air Quality

EPA will engage with key priority countries and UN institutions to address air pollution that contributes significant pollution to the domestic and international environment. For example, several Asian countries are implementing national air quality monitoring, planning, and control strategies with advice and lessons learned from the United States. Environmental policies adopted and implemented overseas will improve competitiveness for U.S. businesses, drive demand for U.S. emissions control technologies, and expand exports of U.S. environmental goods and services, which will create green jobs at home and improve air quality conditions in the United States.

¹⁴¹ J. R. Jambeck, R. Geyer, C. Wilcox, T. R. Siegler, M. Perryman, A. Andrady, R. Narayan, and K. L. Law, "Plastic waste inputs from land into the ocean," *Science*, 2015, Volume 347, Number 622

Food Waste

In FY 2023, EPA will continue to cooperate with the United Nations and the Office of Management and Budget to ensure that methodologies used to track international progress on reducing food waste accurately reflect U.S. progress and to better understand the climate benefits of reducing food waste. Approximately eight to ten percent of global greenhouse gas emissions are from food loss¹⁴² in the agricultural supply chain and consumer food waste. The Agency will continue to advance food waste efforts, which is an increasing portion of landfill waste in rapidly urbanizing cities in developing countries. The problems of food insecurity, in particular for the most vulnerable, have been exacerbated by COVID-19, thus underscoring the need for greater attention to reducing food waste. For example, EPA will bring together experts from the U.S. and partner country governments, non-governmental organizations (NGOs), academia, the private sector, and the UN to promote programs, best practices, and technologies related to food loss and waste.

Chemicals

EPA also will maintain efforts to reduce environmental threats to U.S. citizens from global contaminants impacting air, water, and land. EPA will continue technical and policy assistance for global, regional, and bilateral efforts to address international sources of harmful pollutants, such as mercury. Since 70 percent of the mercury deposited in the U.S. comes from global sources,¹⁴³ both domestic efforts and international cooperation are important to address mercury pollution. EPA will continue to work with international partners and key countries to fully implement obligations under the Minamata Convention on Mercury to protect the U.S. population from mercury emissions originating in other countries, including from artisanal and small-scale gold mining.

With respect to mercury, EPA's measures show that partner countries are on track to develop National Action Plans (NAPs) that demonstrate how they will reduce or eliminate the use of mercury in the Artisanal and Small-Scale Gold Mining (ASGM) sector. ASGM is the largest source of global mercury releases¹⁴⁴ and the development of NAPs called for by the Minamata Convention on Mercury is a critical first step to help major emitters reduce the use and release of mercury into the environment.

EPA will continue to play a leadership role in the Lead Paint Alliance to increase the number of countries that establish effective laws to limit lead in paint, which remains a priority health concern following successful efforts to eliminate lead in gasoline worldwide. EPA consistently meets objectives for reviewing the development of laws in other countries to control their levels of lead in paint, in a manner consistent with U.S. regulations. In doing so, these countries will not only reduce the exposure of their children to lead and prevent the subsequent health effects of this potent developmental neurotoxin, but also will reduce the amount of lead-based paint on products in international commerce that often reach U.S. markets.

¹⁴² For more information, please see: Intergovernmental Panel on Climate Change (IPCC) Special Report on Climate Change and Land, Chapter 5 Food Security, pg 440, https://www.ipcc.ch/site/assets/uploads/sites/4/2021/02/08_Chapter-5_3.pdf.

¹⁴³ For more information, please see: <https://www.epa.gov/international-cooperation/minamata-convention-mercury> and www.mercuryconvention.org.

¹⁴⁴ For more information, please see: [Global mercury assessment | UNEP - UN Environment Programme](#).

In addition, EPA will continue to work with the Arctic Council to further develop a joint project proposal on per- and polyfluoroalkyl substances (PFAS). This effort will focus on aqueous film-forming fire-fighting foams (AFFF) in arctic airports through in-kind technical expertise.

Performance Measure Targets:

(PM E13a) Number of climate engagements that result in an individual partner commitment or action to reduce GHG emissions, adapt to climate change, or improve resilience in a manner that promotes equity.	FY 2022 Target	FY 2023 Target
	8	10

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$285.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$1,227.0 / +7.0 FTE) This net program change is an increase to address international sources of pollution that impact the nation's air, water, land, the oceans, food crops / food chains, and climate change through coordination with international partners. This includes \$1.391 million in payroll.
- (+\$3,500.0) This program change is an increase for climate change work, including climate change mitigation. This will include indigenous engagement climate mitigation.

Statutory Authority:

In conjunction with the National Environmental Policy Act (NEPA) § 102(2)(F); Clean Air Act § 103(a); Clean Water Act § 104(a)(1)-(2); Safe Drinking Water Act (SDWA) § 1442(a)(1); Resource Conservation and Recovery Act (RCRA) § 8001(a)(1); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) §§ 17(d), 20(a); Toxic Substances Control Act (TSCA) §10(a); Marine Protection, Research, and Sanctuaries Act (MPRSA) § 203(a)(1); E.O. 13547; E.O. 13689; U.S.-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. §§ 4501-4372.

Trade and Governance

Program Area: International Programs

Goal: Tackle the Climate Crisis

Objective(s): Advance International and Subnational Climate Efforts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$5,894	\$5,292	\$6,187	\$895
Total Budget Authority	\$5,894	\$5,292	\$6,187	\$895
Total Workyears	12.7	15.3	18.0	2.7

Program Project Description:

EPA has played a key role in trade policy development since the 1972 Trade Act mandated that the U.S. Trade Representative engage in interagency consultations. Specifically, EPA is a member of the Trade Policy Staff Committee, the Trade Policy Review Group, and relevant subcommittees—interagency mechanisms that provide advice, guidance, and clearance to the Office of the U.S. Trade Representative in the development of U.S. international trade and investment policy. Trade influences the nature and scope of economic activity and therefore the levels of pollutant emissions and natural resource use. EPA's role in trade negotiations is to ensure that agreements have provisions that are consistent with the Administration's environmental protection goals while not putting the United States at an economic disadvantage. EPA offers technical assistance and environmental governance capacity building for trade partners to support implementation of environmental commitments made in Free Trade Agreements. EPA also provides technical expertise on environmental governance and policy for international financial institutions, including environmental policy reviews and project-level environmental guidance.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 1/Objective 1.3, Advance International and Subnational Climate Efforts in the *FY 2022 – 2026 EPA Strategic Plan*.

Free Trade Agreements and United States-Mexico-Canada Agreement (USMCA)

In FY 2023, EPA will continue its participation in the North American Commission for Environmental Cooperation (CEC), which provides regional and international leadership to advance environmental protection, human health, and sustainable economic growth in North America. EPA also will continue work on implementation of the Environment Chapter of the United States-Mexico-Canada Agreement (USMCA) and other free trade agreements. EPA activities will include monitoring and verifying provisions pertaining to global and national environmental requirements in the agreement and providing subject matter expertise. EPA will continue active participation in the United States Trade Representative (USTR) led Interagency

Environment Committee for Monitoring and Environment (IECME) established to promote Mexican and Canadian compliance with their environmental obligations.

In addition, EPA will continue to play an active role in Free Trade Agreements (FTAs), and in the development of new FTAs and in the delivery of technical assistance to support implementation of environmental commitments within them. At present, EPA is working on the development of a new FTA, with the governments of the United Kingdom through the USTR-led interagency process. Further, given the President Biden 2021 Trade Agenda's emphasis on achieving climate change objectives and supporting underserved communities, including possibly through trade measures, EPA will provide technical advice and input on the implications of various tools such as carbon border adjustments and environmental goods agreements, and provide governance capacity building.

In FY 2023, EPA will continue to work with partners (including the Treasury Department, State Department, U.S. Agency for International Development, and the U.S. International Development Finance Corporation), to improve environmental governance of U.S. funded international development projects. EPA will support the environmental performance of international financial institutions such as the development of environmental safeguards, including climate performance.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$274.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$621.0 / +2.7 FTE) This program change is an increase in resources and FTE to provide support and capacity building for regional and international Trade and Governance programs addressing climate change and environmental justice. This investment includes \$502.0 thousand in payroll.

Statutory Authority:

In conjunction with the National Environmental Policy Act (NEPA) § 102(2)(F); Clean Air Act § 103(a); Clean Water Act § 104(a)(1)-(2); Safe Drinking Water Act (SDWA) § 1442(a)(1); Resource Conservation and Recovery Act (RCRA) § 8001(a)(1); Federal Insecticide Fungicide and Rodenticide Act (FIFRA) §§ 17(d), 20(a); Toxic Substances Control Act (TSCA) §10(a); Marine Protection, Research, and Sanctuaries Act (MPRSA) § 203(a)(1); E.O. 12915; E.O. 13141; E.O. 13277; U.S.-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. §§ 4501-4372.

US Mexico Border

Program Area: International Programs

Goal: Tackle the Climate Crisis

Objective(s): Advance International and Subnational Climate Efforts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$2,818	\$2,837	\$3,275	\$438
Total Budget Authority	\$2,818	\$2,837	\$3,275	\$438
Total Workyears	13.3	12.4	14.4	2.0

Program Project Description:

The two- thousand-mile border between the United States and Mexico is one of the most complex and dynamic regions in the world. This region accounts for three of the 10 poorest counties in the U.S., with an unemployment rate 250-300 percent higher than the rest of the country.¹⁴⁵ In addition, over 430 thousand of the 14 million people in the region live in 1,200 colonias,¹⁴⁶ which are unincorporated communities characterized by substandard housing and unsafe drinking water or wastewater systems. In 2018 the poverty rate along the two-thousand-mile border was about twice the U.S. average. Population growth indexes show a trend of increasing growth, related among other factors to the influx of migrants from different regions.

This trend has increased the pressure on basic infrastructure and services in border cities, which struggle to keep up with population growth. This includes unincorporated communities characterized by substandard housing and unsafe drinking water. Colonias also exist in Arizona, California, New Mexico and Texas. The adoption of the Border Programs has gone a long way to protect and improve the health and environmental conditions along a border that extends from the Gulf of Mexico to the Pacific Ocean.

Building on the successes of the Border 2020 Program, the Border 2025 Program lays out a roadmap for continued environmental cooperation over the next several years. The Border 2025 Program, like its predecessors, continues to emphasize local priority-setting, focuses on measurable environmental results, and encourages broad public participation. Specifically, Border 2025 builds on earlier program work¹⁴⁷, which includes removing more than 13 million scrap tires from the border, establishing drinking water connections for more than 54,000 homes and adequate wastewater connections for over half a million homes; in addition to highlighting regional areas where environmental improvements are most needed, establishing thematic goals supporting the

¹⁴⁵ For additional information, please see:

http://www.nnirr.org/drupal/sites/default/files/unm_the_us_mexico_border_region_at_a_glance.pdf

¹⁴⁶ For additional information, please see: <https://www.dallasfed.org/~media/documents/cd/pubs/lascalonias.pdf>.

¹⁴⁷ For additional information, please see: https://www.epa.gov/sites/default/files/2021-05/documents/final_b2020_acc_report_may_24_2021.pdf.

implementation of projects, considering new fundamental guiding principles, and encouraging the achievements of more ambitious environmental and public health goals.

The Border 2025 Program identifies four long-term goals to address the serious environmental and environmentally related public health challenges, including the impact of transboundary transport of pollutants in the border region. These strategic goals are: Reduce Air Pollution; Improve Water Quality; Promote Sustainable Materials and Waste Management; Clean Sites; and Improve Joint Preparedness for and Response to Hazardous Environmental Emergencies.

EPA and the Secretariat of Environment and Natural Resources (SEMARNAT) will continue to closely collaborate with the 10 border states (four U.S./six Mexican), 26 U.S. federally recognized Indian tribes and local communities in prioritizing and implementing projects that address their particular needs.

Note: The border water and wastewater infrastructure programs are described in the State and Tribal Assistance Grants (STAG) appropriation, Infrastructure Assistance: Mexico Border Program.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 1/Objective 1.3, Advance International and Subnational Climate Efforts in the *FY 2022-2026 EPA Strategic Plan*.

Air Pollution:

In FY 2023, EPA will continue to focus on air pollution reductions in binational airsheds, work on reducing emissions through implementing policy-based or technology-based programs, maintaining effective air quality monitoring networks and timely access to air quality data along the border region. This effort to meet health-based air quality standards, especially for particulate matter and ozone, is expected to mitigate negative effects on public health by deploying innovative strategies or technologies and building public awareness of associated health risks, including higher incidence rates for asthma and increased health-related school absences for children and vulnerable populations.

EPA and SEMARNAT will continue to build on the successful air quality efforts conducted under the Border 2020 Program, which has resulted in complete greenhouse gas emissions inventories for each Mexico border state and improved public health, especially in underserved communities. In addition, building upon over 20 years of binational air quality success within the shared New Mexico, Texas, and Chihuahua air basin, local coordinated efforts will advance work to address mobile sources at two designated Border cities.

EPA will assist in improved compliance with vehicle emission standards, establishment of and compliance with vehicle inspection and maintenance programs, increased data-sharing on used vehicle emissions testing, and strengthened Green Freight Programs such as Transporte Limpio (Mexico) and SmartWay (United States). The benefit in cooperation with Mexican border cities has a high positive impact on Texas' largest populated border city of El Paso in protecting U.S.

citizens and vulnerable populations, as Juarez and El Paso make up a metropolitan area that shares and breathes the same air. Along the U.S. border, California, Arizona, and New Mexico have completed Climate Change Action Plans.

Water Management:

In FY 2023, the Agency will continue to address border water management in the Tijuana River Watershed. The United States-Mexico-Canada Trade Agreement (USMCA) authorizes and directs EPA to coordinate with specific federal, state, and local entities to plan and implement high priority infrastructure projects that address transboundary pollution affecting San Diego County. EPA will advance implementation of projects to prevent and reduce the levels of trash and sediment from entering high priority binational watersheds. Other projects that prevent/reduce marine litter should primarily focus on preventing waste at the source through improvements to solid waste management systems, education campaigns, and monitoring as well as reducing trash from entering the aquatic environment through the capture of litter using river booms in known watershed litter hot spots.

Sustainable Materials Management:

In FY 2023, EPA will continue to collaborate and partner on sustainable materials management demonstration projects to prevent waste and improve the recovery of materials, such as plastic, e-waste, and scrap tires, through public-private partnership programs and infrastructure investments in the border region to mitigate public health and environmental impacts and avoid costly cleanup efforts. Each region of Mexico's northern border has different economic, social, and cultural situations, with different capacities to mitigate the generation and management of waste and secondary materials.

Planning:

EPA will continue to work to increase institutional capabilities in planning and technical assistance, enabling the development of programs, projects, or actions, which take into account the life cycle analysis of natural resource economics, manufacturing, transport, and other market factors to more effectively harvest and use materials and avoid them from being lost to landfills.

Additionally, the United States and Mexico will work together to enhance joint preparedness for environmental response and facilitate easier transboundary movement of emergency response equipment and personnel by activities such as updating Sister City Plans with preparedness and prevention and providing training to emergency responders on preparedness and prevention related activities. As part of the efforts for binational emergency preparedness and response, work will continue updating of the Mexico-U.S. Joint Contingency Plan in both Spanish and English. In addition, both countries will coordinate efforts in binational border wide work.

Performance Measure Targets:

(PM E13b) Number of Border 2025 actions implemented in the U.S.-Mexico Border area to improve water quality, solid waste management and air quality including those that address climate change, and advance emergency response efforts.	FY 2022 Target	FY 2023 Target
	3	10

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$128.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$310.0 / +2.0 FTE) This net program change is an increase to support efforts in mitigating pollution and addressing climate change related activities along the United States and Mexico Border. To address the needs in the region and in support of the Border 2025 program priorities, this effort continues to focus on smaller scale sustainability and core capacity building projects designed to improve the environment and protect the health of the nearly 14 million people living along the U.S.-Mexico border. This investment includes \$354.0 thousand in payroll.

Statutory Authority:

In conjunction with the 1983 Agreement between the United States of America and the Mexican United States on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement) and National Environmental Policy Act (NEPA) § 102(2)(F); Clean Air Act § 103(a); Clean Water Act § 104(a)(1)-(2); Safe Drinking Water Act (SDWA) §§ 1442(a)(1); Resource Conservation and Recovery Act (RCRA) § 8001(a)(1); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) §§ 17(d), 20(a); Toxic Substances Control Act (TSCA) § 10(a); Marine Protection, Research, and Sanctuaries Act (MPRSA) § 203(a)(1); U.S.-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. §§ 4501-4372.

IT/ Data Management/ Security

Information Security

Program Area: IT / Data Management / Security
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$6,765	\$8,285	\$23,739	\$15,454
Hazardous Substance Superfund	\$752	\$659	\$7,859	\$7,200
Total Budget Authority	\$7,516	\$8,944	\$31,598	\$22,654
Total Workyears	16.6	13.1	17.1	4.0

Program Project Description:

Digital information is a valuable national resource and a strategic asset that enables EPA to fulfill its mission to protect human health and the environment. The Information Security Program's mission is to protect the confidentiality, integrity, and availability of EPA's information assets. The information protection strategy includes, but is not limited to, risk management, oversight, and training; network management and protection; and incident management.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*. EPA will work toward full compliance with the five high priority directives (Adoption of Multifactor Authentication, Encryption of Data At Rest, Encryption of Data In Transit, Zero Trust Architecture, and Event Logging) in Executive Order (EO) 14028: *Improving the Nation's Cybersecurity*.¹⁴⁸

Cybersecurity is a serious challenge to our Nation's security and economic prosperity. Effective information security requires vigilance and the ability to quickly adapt to new challenges. EPA maintains a robust, dynamic approach to cybersecurity risk management, governance, and oversight. In FY 2023, to further strengthen the Agency's security posture and to expand its risk management, continuous monitoring, security incident response programs, and to implement EO 14028, EPA requests an additional investment of \$15.5 million and 4.0 FTE. The Agency will continue its partnerships with public and private sector entities to promote the adoption of cybersecurity best practices and reporting to the White House and Congress on the status of these initiatives.

EPA will continue to strengthen information technology (IT) assets and develop resiliency against potential cybersecurity threats. This work includes increasing implementation of Multifactor Authentication to strengthen access controls to data and increasing implementation of encryption for Data at Rest and Data in Transit to protect data. EPA has prioritized investments in specific

¹⁴⁸ For more information on EO 14028, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>.

capabilities that protect and defend the most sensitive systems and information, including those designated as high-value assets. These investments will ensure protections are in place commensurate with the impact of their potential compromise.

Risk Management, Oversight, and Training:

In FY 2023, EPA will continue to include cybersecurity and privacy components in ongoing senior leadership program reviews. These reviews enhance Chief Information Officer (CIO) oversight by enabling better risk area determination and targeted improvement direction to system and mission program managers. While EPA programs and regions maintain responsibility for improving their performance in specific cybersecurity measures, EPA's senior leadership routinely reviews performance results and potential challenges for achieving continuous improvement.

In FY 2023, the Agency will continue to collect Federal Information Security Modernization Act (FISMA)¹⁴⁹ metrics and evaluate related processes, tools, and personnel to identify gaps and opportunities for improvement. EPA's CIO, who also is the Senior Agency Official for Privacy (SAOP), in coordination with the Chief Information Security Officer, will continue to monitor and report on these metrics, in line with OMB Memorandum M-22-05 *Fiscal Year 2021-2022 Guidance on Federal Information Security and Privacy Management Requirements*.¹⁵⁰

The Agency will continue to update policies and procedures in line with the National Institute of Standards and Technology (NIST) in compliance with the release of Special Publications 800-53r5, *Security and Privacy Controls for Information Systems and Organizations*.¹⁵¹ These updates will help to implement a series of controls to address increased threats in the information environment.

In compliance with OMB Memorandum M-21-30, *Protecting Critical Software Through Enhanced Security Measures*,¹⁵² the Agency continues to work on refinements to improve the ability to track and report on critical software used by the Agency in compliance with Federal Information System Reporting and OMB direction.

EPA will further enhance Agency-specific role-based training to ensure personnel in key cybersecurity roles have the skills, knowledge, and capabilities to effectively support EPA's cybersecurity posture.

Network Management and Protection:

In accordance with OMB Memorandum M-22-09 *Moving the U.S. Government Toward Zero Trust Cybersecurity Principles*,¹⁵³ EPA will continue to review and improve controls across several

¹⁴⁹ Including those found in Federal Information Security Modernization Act of 2014 and Federal Information Security Cybersecurity Act of 2015.

¹⁵⁰ For more information, please see <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-05-FY22-FISMA-Guidance.pdf>.

¹⁵¹ For more information, please see: <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>.

¹⁵² For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/08/M-21-30.pdf>.

¹⁵³ For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2022/01/M-22-09.pdf>.

pillars as outlined in the Zero Trust Architecture: protecting identity management capabilities through authentication infrastructure and system configurations. Agency staff will continue to use enterprise-managed identities to access the applications they use in their work and evaluate current solutions to ensure they are resistant to malicious phishing campaigns and can protect EPA assets from sophisticated online attacks. The Agency will continue streamlining processes for hardware and software inventory management, including the implementation of a Configuration Management Database. The Agency will continue to assess existing Encryption for Data at Rest and Data in Transit implementation and work to optimize these encryption capabilities to ensure critical information and network traffic is encrypted. EPA also will embark on an enterprise effort to perform detailed analysis of isolated environments and work on integrating those environments with continuous monitoring capabilities to reduce risk.

In FY 2023, EPA will continue to strengthen cloud security monitoring and access to sensitive data, cyber incident response, and cloud platform management services, which will enable remote workers to securely use systems and services in the cloud while also improving application performance and reducing costs associated with Trusted Internet Connections (TIC).¹⁵⁴ The Agency also will mature use of web content filtering tools to prevent malicious and unauthorized web content from impacting EPA systems and users. The Agency will continue to build its Insider Threat Program for the unclassified network to monitor Privileged Users and Systems Administrators activity, as recommended by several cybersecurity assessments,¹⁵⁵ and to monitor and report on EPA networks and systems.

By moving to Zero Trust Architecture, EPA can further strengthen network resiliency and reliability. The development of networks which can resist malevolent actions regardless of their origin is an information security priority. Zero Trust Architecture will grant authorized users with full access to the tools and resources needed to perform their jobs but limit further access to unnecessary areas. Proper permissions for a given user's needs is a critical component of Zero Trust Architecture and coding for more granular control over the network environment is an information security priority.

Incident Management:

Cyberattacks across critical infrastructure sectors are rapidly increasing in volume and sophistication, impacting both IT and operational technology systems. EPA's Agency IT Security and Privacy (AITSP) Program enables agencywide implementation, management, and oversight of the CIO's Information Security and Privacy Programs through continuous monitoring functions. Continuous monitoring capabilities, which serve to identify and address security vulnerabilities and incidents quickly, are vital to ensure that EPA's information environment remains safe.

In FY 2023, EPA will continue to support the ongoing implementation of capabilities for data labeling and data loss prevention, as well as remote computer imaging and forensics, all of which

¹⁵⁴ For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2019/09/M-19-26.pdf>.

¹⁵⁵ These assessments include Annual Assessments and Classified briefings with the Department of Homeland Security and EPA's Office of Homeland Security, as well as a 2017 OIG Report, available at: https://www.epa.gov/sites/production/files/2017-10/documents/_epa_oig_20171030-18-p-0031.pdf.

will improve security information and event management by collecting, synthesizing, managing, and reporting cybersecurity events for systems across the Agency.

The Information Security Program supports EPA's Security Operations Center (SOC), which manages the Computer Security Incident Response Capability (CSIRC) processes to support identification, response, alerting, and reporting of suspicious activity. In accordance with OMB Memorandum M-21-31 *Improving the Federal Government's Investigative and Remediation Capabilities Related to Cybersecurity Incidents*,¹⁵⁶ in FY 2023, EPA will continue to mature the system logging capabilities to meet Event Logging (EL) Level 2 for Intermediate Logging requirements of highest and intermediate criticality and EL Level 3 for Advanced Logging requirements at all criticality levels. Through CSIRC, EPA will continue to maintain relationships with other federal agencies and law enforcement entities, as needed, to support the Agency's mission. The incident response capability includes components such as detection and analysis, forensics, and containment and eradication activities.

In compliance with EO 14028, the Security Operations Center will continue maturation and refinement of the Agency's Incident Response procedures in compliance with Cybersecurity and Infrastructure Security Agency's Playbook for Responding to Cybersecurity Vulnerabilities and Incidents. In compliance with OMB Memorandum M-22-01 *Improving Detection of Cybersecurity Vulnerabilities and Incidents on Federal Government Systems through Endpoint Detection and Response*,¹⁵⁷ the Agency's Security Operations Center will work to integrate End Point Detection and Response capabilities with the Continuous Diagnostics and Mitigation Program to support proactive detection of cybersecurity incidents within EPA's information environment, active cyber hunting, containment and remediation, and incident response. EPA will continue modernizing its network and system logging capabilities (on-premises systems and connections hosted by third parties, such as Cloud Service Providers) for both investigation and remediation purposes.

Additionally, the Agency continues to mature Coordinated Vulnerability Disclosure (CVD), through program expansion and improved notification, response, and reporting activities. By working with internal stakeholders, private industry, and federal organizations to communicate vulnerabilities discovered or encountered, CVD decreases the harm or time an adversary can use to deny or disrupt services to the networks.

EPA leverages capabilities through the Continuous Diagnostics and Mitigation (CDM) Program, which addresses agencies' cybersecurity protection gaps and allows EPA to efficiently identify and respond to federal-wide cybersecurity threats and incidents. In FY 2023, as part of the work with the Department of Homeland Security to support implementation of current and future Phase CDM requirements, the CDM Program will continue closing remaining gaps in privileged access to EPA's network and continue to provide critical security controls for the Agency's cloud applications. The CDM Program also will review interior EPA network boundary protection from interconnections to external networks, expand endpoint detection and response capabilities, and integrate mobile device discovery to expand program capabilities. In FY 2023, EPA estimates a \$13.4 million budget for the CDM Program.

¹⁵⁶ For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/08/M-21-31-Improving-the-Federal-Governments-Investigative-and-Remediation-Capabilities-Related-to-Cybersecurity-Incidents.pdf>.

¹⁵⁷ For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/10/M-22-01.pdf>.

Supply Chain Risk Management:

In FY 2023, EPA will continue to develop the Agency's program to implement Cybersecurity Supply Chain Risk Management Controls to comply with the Government Accountability Office (GAO) findings¹⁵⁸ and *NIST 800-53 Rev 5 Security and Privacy Controls for Information Systems and Organization*.¹⁵⁹ This work includes coordinating across the Agency with professionals from Information Technology, Information Security, and Procurement to update the policy and obtain the necessary tools to address these critical security requirements, which were a vulnerability in the Log4J FY 2022 intrusion. In compliance with EO 14028, Sec. 4. *Enhancing Software Supply Chain Security*, EPA will implement standards, procedures, and criteria to harden and secure software development environments, and investigate the addition of automated tools to secure the development environment.

Performance Measure Targets:

(PM MFA) Percentage of EPA systems in compliance with multifactor authentication requirements.	FY 2022 Target	FY 2023 Target
	75	85
(PM DAR) Percentage of EPA data at rest in compliance with encryption requirements.	FY 2022 Target	FY 2023 Target
		No Target Established
(PM DIT) Percentage of EPA data in transit in compliance with encryption requirements.	FY 2022 Target	FY 2023 Target
		No Target Established
(PM ZTA) Percentage implementation of an approved "Zero Trust Architecture."	FY 2022 Target	FY 2023 Target
		No Target Established
(PM ALR) Implementation of advanced event logging requirements (EL3) across EPA networks.	FY 2022 Target	FY 2023 Target
	EL1	EL3

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$106.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$15,348.0 / +4.0 FTE) This program change supports enhancements to protect the Agency's information technology infrastructure and advance the implementation of EO 14028: *Improving the Nation's Cybersecurity*. This investment will increase EPA's

¹⁵⁸ Government Accountability Office Report on information and communications technology (ICT) Supply Chain: GAO-21-164SU.

¹⁵⁹ For more information, please see: <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>.

information technology resiliency and limit vulnerabilities in the event of a malicious attack. This investment includes \$790.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Cybersecurity Act of 2015; Federal Information Security Modernization Act (FISMA); Government Performance and Results Act (GPRA); Government Management Reform Act (GMRA); Clinger-Cohen Act (CCA).

IT / Data Management

Program Area: IT / Data Management / Security
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$74,013</i>	<i>\$82,715</i>	<i>\$98,452</i>	<i>\$15,737</i>
Science & Technology	\$2,782	\$3,072	\$3,195	\$123
Hazardous Substance Superfund	\$20,984	\$13,826	\$16,904	\$3,078
Total Budget Authority	\$97,779	\$99,613	\$118,551	\$18,938
Total Workyears	467.8	482.4	486.4	4.0

Total workyears in FY 2023 include 172.0 FTE to IT/Data Management working capital fund (WCF) services.

Program Project Description:

The work performed under the Information Technology/Data Management (IT/DM) Program supports human health and the environment by providing critical IT infrastructure and data management. The Program ensures analytical support for interpreting and understanding environmental information; exchange and storage of data, analysis, and computation; rapid, secure, and efficient communication; and access to scientific, regulatory, policy, and guidance information needed by the Agency, regulated community, and the public.

This program supports the maintenance of EPA's IT and Information Management (IT/IM) services that enable citizens, regulated facilities, states, and other entities to interact with EPA electronically to access, analyze and understand, and share environmental data on-demand. The IT/DM Program also provides support to other IT development projects and essential technology to EPA staff, enabling them to conduct their work effectively and efficiently in the context of federal IT requirements, including the Federal Information Technology Acquisition Reform Act (FITARA); Technology Business Management (TBM); Capital Planning and Investment Control; and the Open, Public, Electronic, and Necessary Government Data Act.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support to strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an increase of \$4 million to support Future of Work efforts of the Agency, supporting an investment in the latest collaboration and productivity IT tools and software necessary for a modern hybrid workforce and in the IT infrastructure necessary to maintain a permanent increase in telework, remote work, and operational readiness.

Additionally, EPA requests \$6.16 million in FY 2023 to establish a dedicated funding source for the maintenance and modernization of the Agency's enterprise network switch infrastructure

necessary for the operations of the EPA network including data centers. This funding ensures critical infrastructure is replaced when it reaches end of life/end of support. Failure to replace switch infrastructure may result in network degradation, which leaves EPA vulnerable to cybersecurity threats, and can disrupt operations.

The Agency also requests an increase of \$4.7 million and 4 FTE across the EPM and Superfund appropriations to support implementation of the Agencywide Digitization Strategy, which includes the operation of two EPA digitization centers and the development and operation of a modernized records Management Technology, which is necessary to meet the requirements of Memoranda M-19-21 *Transition to Electronic Records*¹⁶⁰ issued by the Office of Management and Budget and the National Archives and Records Administration. EPA will leverage artificial intelligence and machine learning to assist staff with appropriately scheduling electronic records that are saved to the Record Management Technology. EPA will operate the Paper Asset Tracking Tool and Content Ingestion Services to track paper records as they are submitted and processed through the digitization centers.

EPA also will continue to maintain and manage its core IT/ DM services, including Information Collection Requests, the National Library Network, the Agency's Docket Center, and EPA's Section 508 Program. The Agency also will continue implementing the 21st Century Integrated Digital Experience Act (P.L. 115-336), which includes modernization of public-facing websites and digital services, as well as digitization of paper forms and non-digital services. EPA will finalize a complete inventory of the Agency's paper forms, develop the process to digitize these forms in compliance with the 21st Century Integrated Digital Experience Act, and begin digitizing the forms. EPA's Controlled Unclassified Information Program also will continue work to standardize, simplify, and improve information management and IT practices to facilitate the sharing of important sensitive data within the Agency, with key stakeholders outside of the Agency, and with the public, meeting federal standards as required by Executive Order 13556: *Controlled Unclassified Information*.¹⁶¹

In FY 2023, EPA will further strengthen its IT acquisition and portfolio review process as part of the implementation of FITARA. In the most recent FITARA scorecard, released in December 2021,¹⁶² EPA scored an overall B+, the third highest rating among Chief Financial Officers Act agencies.

In FY 2023, EPA will continue work on converting prioritized internal administrative paper or analog workflows into modern digital workflows to speed up common administrative tasks, reduce burdensome paperwork for EPA employees and managers, and improve internal data collection and reporting. This work will build on work completed in FY 2022 to identify a set of processes which will yield the greatest benefit for the Agency upon automation and to complete a high priority pilot automation project.

¹⁶⁰ For additional information, please refer to: <https://www.whitehouse.gov/wp-content/uploads/2019/08/M-19-21-new-2.pdf>.

¹⁶¹ For more information, please refer to Executive Order: <https://www.federalregister.gov/documents/2010/11/09/2010-28360/controlled-unclassified-information>.

¹⁶² For additional information, please refer to: <https://fitara.meritalk.com/>.

EPA's Customer Experience (CX) Program will focus on improving the mission support experience of EPA staff to improve their ability to serve the public. The Program focuses on collaborations such as the System Lifecycle Management process, which collects feedback from IT professionals, regions, programs, and other stakeholders to improve the EPA system development process. In FY 2023, the CX Program will collect customer feedback, conduct data analytics, assess priorities within a governing community of practice, and present recommendations to senior leaders to allocate resources to improve CX initiatives.

The Agency's Chief Technology Officer, Chief Architect, and Chief Data Officer will continue to enhance enterprise software development and architecture capabilities, including application development, deployment approaches, and technical platform support. EPA will identify and prioritize the interoperability of data within EPA and across federal agencies that benefits internal and public-facing services. Driven by demand from federal partners, EPA will identify opportunities to share data with other federal partners in the National Secure Data Service. EPA will support data collection in a few priority areas, where required, to improve our efforts to address our learning agenda priority questions, environmental justice, and other agency efforts focused on civil rights and equity challenges.

In FY 2023, the Agency will continue to support the essential capabilities of GeoPlatform, a shared technology enterprise for geospatial information and analysis. By implementing geospatial data, applications, and services such as the Facility Registry System, the Agency can integrate, interpret, and visualize multiple data sets and information sources to support environmental decisions. The Agency will continue developing and increasing capabilities of EPA's Data Management and Analytics Platform, which has both internal and public facing elements such as Envirofacts. EPA will partner with other agencies, states, tribes, and academic institutions to propose innovative ways to use, analyze, and visualize data through EPA's Data Management and Analytics Platform. After completing an alternatives analysis for regulatory data, EPA will begin implementing an enterprise full data life cycle approach for managing regulated facility data.

In FY 2023, the Agency's One EPA Web will continue to manage content and support internal and external users with information on EPA business, support employees with internal information, and provide a clearinghouse for the Agency to communicate initiatives and successes. EPA also will continue to upgrade its web infrastructure, ensuring that it meets current statutory and evolving security requirements.

Registries are shared data services in which common data are managed centrally but shared broadly. They improve data quality in EPA systems, enable integration and interoperability of data across program silos, and facilitate discovery of EPA information publicly and internally. In FY 2023, EPA will increase the use of registries, migrate them to a cloud infrastructure, and improve their quality by modernizing them from custom built solutions to Commercial Off-The-Shelf tools with expanded capabilities.

Performance Measure Targets:

(PM GOPA) Percentage of priority internal administrative processes automated.	FY 2022 Target	FY 2023 Target
		10

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$2,178.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$6,160.0) This change to fixed and other costs is an increase to provide funding for the enterprise network switch infrastructure necessary for the operations of the EPA network including data centers. This funding ensures critical infrastructure is replaced when it reaches end of life/end of support. Failure to replace switch infrastructure may result in network degradation, leave EPA vulnerable to cybersecurity threats, and disrupt EPA operations.
- (+\$3,399.0 / +4.0 FTE) This program change is an increase to support operations of EPA's National Digitization Program and enterprise-wide records management system, which provide for the centralized management and digitization of the Agency's records in an electronic manner. This investment will improve records management, reduce records costs across EPA programmatic offices, and enable EPA to comply with statutory requirements under the Federal Records Act. This investment includes \$712.0 thousand for payroll.
- (+\$4,000.0) This program change is an increase to provide the necessary support for a hybrid modern workforce and will require the integration of facilities and infrastructure, human resources, and information technology programs in order to successfully re-envision the federal work environment.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Federal Information Technology Acquisition Reform Act; Federal Information Security Modernization Act (FISMA); Government Performance and Results Act (GPRA); Government Management Reform Act (GMRA); Clinger-Cohen Act (CCA); Rehabilitation Act of 1973 § 508.

Legal/ Science/ Regulatory/ Economic Review

Administrative Law

Program Area: Legal / Science / Regulatory / Economic Review
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$3,768	\$4,975	\$5,882	\$907
Total Budget Authority	\$3,768	\$4,975	\$5,882	\$907
Total Workyears	19.8	23.8	25.8	2.0

Program Project Description:

This program supports EPA's Administrative Law Judges (ALJs) and the Environmental Appeals Board (EAB).

Administrative Law Judges

The ALJs preside in hearings and issue initial decisions in cases initiated by EPA's enforcement program concerning environmental, civil rights, and government program fraud related violations. Additionally, pursuant to an interagency agreement providing for reimbursement of services, the ALJs also adjudicate enforcement actions brought by National Oceanic and Atmospheric Administration (NOAA), primarily under statutes protecting marine mammals and endangered species over which EPA and NOAA share jurisdiction, such as the Marine Protection, Research, and Sanctuaries Act and Endangered Species Act. The Fifth Amendment of the Constitution of the United States of America guarantees the regulated community the right to due process of the law. The ALJs issue orders and decisions under the authority of the Administrative Procedure Act (APA) and the various environmental, civil rights, and anti-fraud statutes that establish administrative enforcement authority and implement the Constitution's guarantee of due process.

The ALJs preside in hearings in cases initiated at EPA Headquarters and in each of EPA's 10 regional offices. Parties participating before the ALJs include local and national community groups, private parties, and federal, state, and local governments. The ALJs promote public participation in the administrative hearing process through remote hearings and prehearing conferences and maintain an extensive website, accessible to the public, containing all initial decisions and case filings. Additionally, to promote access to justice, participants in cases pending before the ALJs may file documents electronically and are not required to pay a filing fee or be represented by counsel. The ALJs also offer an opportunity for alternative dispute resolution to completely resolve disputed issues or narrow the issues to be decided after a hearing, which may further reduce costs.

The right of affected persons to appeal ALJ initial decisions is conferred by various statutes, regulations, and constitutional due process rights. A small subset of the initial decisions issued by the ALJs are appealed to the Environmental Appeals Board.

Environmental Appeals Board

The Environmental Appeals Board (EAB) is a four-member appellate tribunal established by regulation in 1992 to hear appeals and issue decisions in environmental adjudications (primarily enforcement and permit related) under all major environmental statutes that EPA administers. The EAB promotes the rule of law and furthers the Agency's mission to protect human health and the environment. The EAB furthers the Agency's mission to advance environmental justice and address climate-related issues by ensuring the integrity of federal decision-making and fairness in its adjudication of administrative appeals.

Since the 1994 Executive Order on Environmental Justice was issued, the EAB has played a pioneering role in ensuring that the Agency meets its obligation with respect to environmental justice and, for example, in the context of permitting, has remanded several permit cases where the record did not support a finding that the permit authority reasonably considered the contested environmental justice issues in their permit decision making process.

To promote access to justice, parties appearing before the Board are not required to be represented by counsel or pay a filing fee. Additionally, the Board promotes public participation in the appeals process through remote oral arguments and maintains an extensive website, accessible to the public, containing all final Board decisions and case filings. Among others, parties participating before the Board include local and national community groups, tribal nations, private parties, and state and local governments.

The EAB decides petitions for reimbursement under the Comprehensive Environmental Response, Compensation, and Liability Act Section 106(b); hears appeals of pesticide licensing and cancellation proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and serves as the final approving body for proposed settlements of enforcement actions initiated at EPA. The EAB issues decisions in a fair and timely manner consistent with the Administrative Procedure Act (APA) and the applicable environmental statutes, and under the authority delegated by the Administrator and pursuant to regulation, ensuring consistency in the application of legal requirements. In 90 percent of matters decided by the EAB, no further appeal is taken to federal court, providing a final resolution to the dispute. The EAB also offers an opportunity for alternative dispute resolution.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the ALJs will continue to convene formal hearings either remotely or in the location of the alleged violator or violation, as required by statute. In FY 2023, the EAB will continue to efficiently and fairly adjudicate permit and enforcement appeals under all statutes as well as petitions for reimbursement under Comprehensive Environmental Response, Compensation and Liability Act, expediting appeals such as Clean Air Act New Source Review cases and FIFRA licensing proceedings that are particularly time sensitive. The EAB and ALJs also anticipate addressing a potential increase in environmental justice-related issues and in new work assuring

access to justice, including for tribal nations and parties impacted by environmental justice related concerns.¹⁶³

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$178.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$729.0 / +2.0 FTE) This program increase advances environmental justice through the Administrative Law Program. This investment includes \$431.0 thousand in payroll.

Statutory Authority:

Administrative Procedure Act (APA); Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Clean Water Act (CWA); Clean Air Act (CAA); Toxic Substance Control Act (TSCA); Solid Waste Disposal Act (SWDA); Resource Conservation and Recovery Act (RCRA); Safe Drinking Water Act (SDWA); Emergency Planning and Community Right-to-Know Act (EPCRA); Marine Protection, Research, and Sanctuaries Act (MPRSA); Mercury-Containing and Rechargeable Battery Management Act (MCRBMA); the Act to Prevent Pollution From Ships (APPS).

¹⁶³ For additional information on the Administration's priority on "Tackling the Climate Crisis at Home and Abroad," please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

Alternative Dispute Resolution

Program Area: Legal / Science / Regulatory / Economic Review

Goal: Enforce Environmental Laws and Ensure Compliance

Objective(s): Hold Environmental Violators and Responsible Parties Accountable

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$533	\$864	\$1,175	\$311
Hazardous Substance Superfund	\$632	\$832	\$868	\$36
Total Budget Authority	\$1,165	\$1,696	\$2,043	\$347
Total Workyears	2.1	5.9	6.9	1.0

Program Project Description:

EPA's Alternative Dispute Resolution (ADR) Program offers cost-effective processes for preventing and resolving conflicts on environmental matters and some workplace conflicts as an alternative to litigation. The Program provides facilitation, mediation, public involvement, training, consensus building advice and support, legal counsel, and organizational development support to external stakeholders and to all EPA programs.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 3/Objective 3.1, Hold Environmental Violators and Responsible Parties Accountable in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to provide conflict prevention and ADR services to all EPA programs and external stakeholders on environmental matters. This program also supports implementation of Executive Order (EO) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.¹⁶⁴

Specifically, ADR will:

- Continue to administer its five-year, \$53 million Conflict Prevention and Resolution Services contract. The contract supports the ADR Program by providing the above services to more than 100 active projects and is expected to take on an additional 20-30 projects in FY 2023. The Program expects a growth in the areas of environmental justice, climate change, and Title VI civil rights cases.
- Directly provide facilitation, mediation, and training services through the conflict resolution specialists on staff. The ADR Program expects to directly support agency programs and stakeholders by providing facilitation, mediation, or other consensus building support on five to eight projects.

¹⁶⁴ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

- Provide training to EPA staff in conflict resolution concepts and skills. The ADR Program offers this training through its cadre of eight interactively designed courses to all national program offices and regions. Adapting to a virtual environment in FY 2021 has allowed the ADR Program to reach many more programs throughout the Agency and expects that to increase in FY 2023.
- Help to achieve the goals of President Biden's Justice40 initiative by tracking the number of CPRC projects in which services are provided to disadvantaged communities.

The following are examples of FY 2021 accomplishments:

- Successfully managed a \$53 million Conflict Prevention and Resolution Services contract and administered 203 contract actions valued at \$35.9 million in the first two years.
- Supported 95 environmental collaboration and conflict resolution cases nationwide, including multiple Administrator priority projects, such as the National Recycling Strategy, the Tijuana River Watershed, and implementation of the Save Our Seas legislation. Additional projects include the National Stakeholder Engagement on Disaster Debris and Community Support for Tribal Asthma.
- Trained more than 479 EPA personnel in conflict resolution skills through 11 courses and supported an additional six conflict resolution trainings for 164 EPA staff and managers.

Performance Measures Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$31.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$280.0 / +1.0 FTE) This program change is an increase for the use of alternative dispute resolution processes, such as mediation and facilitation, to promote equity by including underserved communities in negotiations. This includes \$196.0 thousand in payroll.

Statutory Authority:

Administrative Dispute Resolution Act (ADRA) of 1996; Negotiated Rulemaking Act of 1996; Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

Civil Rights Program

Program Area: Legal / Science / Regulatory / Economic Review

Goal: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective(s): Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$8,968	\$9,205	\$25,869	\$16,664
Total Budget Authority	\$8,968	\$9,205	\$25,869	\$16,664
Total Workyears	46.5	54.4	121.9	67.5

Program Project Description:

The Civil Rights Program enforces federal civil rights laws that prohibit discrimination by recipients of federal financial assistance and protect employees and applicants for employment from discrimination. There are two offices within the Agency's Civil Rights Program, the Office of Civil Rights (OCR) and the External Civil Rights Compliance Office (ECRCO). OCR has responsibility for the internal enforcement of several civil rights laws related to equal employment opportunity (EEO), and ECRCO carries out the external enforcement of several civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from EPA.

OCR, within EPA's Office of the Administrator, provides leadership, direction, and guidance in carrying out the Agency's EEO Program. OCR is responsible for advising senior leadership and Agency managers in carrying out their EEO responsibilities. OCR also conducts workforce analysis to identify and eliminate barriers to employment and advancement. Additionally, OCR offers counsel to employees, promotes alternative dispute resolution mechanisms to resolve EEO disputes, investigates EEO complaints, and issues EEO decisions. Further, OCR assists managers in processing reasonable accommodation requests made by persons with disabilities or COVID-19 unvaccinated or partially vaccinated employees.

ECRCO, within the Office of General Counsel, investigates and resolves external complaints, develops policy guidance, conducts affirmative compliance reviews, and provides technical assistance to recipients of federal funds and outreach to communities. In FY 2021, ECRCO committed to strengthening civil rights enforcement to address health and environmental disparities, eliminate discriminatory barriers to clean air, water, and land, and ensure the protection of human health and the environment for all persons in the United States. This commitment includes the following: initiating pre-award and post-award proactive civil rights compliance activities, including affirmative compliance reviews; increasing transparency by affirmatively providing information to the public; developing guidance documents to clarify interpretations of requirements and expectations, including about adverse disparate impacts in the permitting context and the consideration of cumulative impacts in disparate impact analysis; partnering with the

Office of Environmental Justice (OEJ) to assist with the integration of environmental justice (EJ) principles in civil rights enforcement and to facilitate EPA responses to EJ issues; enhancing communication and engagement with environmentally overburdened and disadvantaged communities; and strengthening interagency collaboration across the federal government to enforce federal civil rights laws.

In FY 2021, ECRCO launched strategic planning efforts in response to Executive Order (EO) 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. ECRCO began developing criteria for the initiation of compliance reviews, starting by the first quarter of FY 2022, to address important civil rights issues in at least one environmentally burdened community. ECRCO also began to develop a compliance review planning process for prioritizing annual compliance reviews, beginning in FY 2022. On January 6, 2022, ECRCO issued “External Civil Rights Compliance Office (ECRCO) Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews.” In addition, ECRCO is developing civil rights guidance for recipients on procedural safeguards to be issued in the near future in FY 2022.

In FY 2021, ECRCO also continued to meet its internal performance measures to ensure the timely resolution of discrimination complaints. ECRCO issued preliminary findings within 180 days of acceptance of the complaint, in two out of two cases, as required by EPA’s regulation. In addition, ECRCO continued to implement internal performance measures to ensure that all complaints resolved through Informal Resolution Agreements receive those resolutions in a timely fashion. ECRCO continued an EPA-wide contract to provide language assistance services to customers with limited-English proficiency. In addition, ECRCO continued to improve its process for and support of complaint docket management through investigations, informal resolution agreements, and mediation consistent with EPA’s nondiscrimination regulation and its revised Case Resolution Manual, issued in the second quarter of 2021. In addition, ECRCO conducted internal stakeholder engagement and reinvigorated comprehensive training efforts within EPA. On October 27, 2021, ECRCO held its first ever public listening session, which over 200 people attended. In FY 2021, ECRCO also finalized the development of additional tools and internal metrics to evaluate the progress and effectiveness of ECRCO’s continued proactive initiatives with Regions 1, 5, and 7 and their respective states to promote states’ development of robust nondiscrimination programs.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 2/Objective 2.3, Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns. Work in this program also directly supports progress toward the Agency Priority Goal: *Deliver tools and metrics for EPA and its Tribal, state, local, and community partners to advance environmental justice and external civil rights compliance. By September 30, 2023, EPA will develop and implement a cumulative impacts framework, issue guidance on external civil rights compliance, establish at least 10 indicators to assess EPA’s performance in eliminating disparities in environmental and public health conditions, and train staff and partners on how to use these resources.*

Office of Civil Rights

In FY 2023, OCR will address potential barriers to employment and advancement, enhancing training and service delivery, and assessing organizational EEO efforts during Technical Assistant Visits (TAVs) with the Program and regional offices. Additionally, OCR will actively support, and as required, lead specific efforts to implement the Agency's Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan as required by Executive Order (EO) 14035.¹⁶⁵

Employee Complaints and Resolution (ECR)

In FY 2023, OCR will dedicate a large portion of its resources to the processing of discrimination complaints, EEO-related training for management and staff, and marketing the benefits of the Alternative Dispute Resolution (ADR) Program. ECR is expected to engage in the following activities:

- Evaluate the effectiveness of the revised procedures for processing Final Agency Decisions.
- Implement strategies for transparently communicating and addressing trends in formal complaints at the Program office and regional office levels.
- Implement ADR training (for management and staff) and issue program manuals and other ADR marketing materials to strengthen participants' knowledge and to increase offers and participation in the ADR process.
- Implement a revised TAV agenda based on feedback from previous TAVs completed to ensure an enhanced customer experience and usefulness.
- Recruit and train new collateral duty EEO Counselors.

Affirmative Employment, Analysis, and Accountability (AEAA)

In FY 2023, AEAA will continue to focus on identifying and eliminating barriers to employment and advancement at the Agency. This will include enhanced data analysis and greater capacity to investigate workforce data triggers. In FY 2023, AEAA expects to engage in the following activities:

- Continue to monitor the effectiveness of measures implemented from the "Barrier Analysis Report: Increasing the Use of the Schedule A (Disability) Hiring Authority".
- Finalize the "Upward Mobility of Employees into the Senior Grades through the Senior Executive Service (SES) based on the EEO Categories of Race and Sex".
- Begin implementing recommendations resulting from the EPA MD-715¹⁶⁶ priority regarding the collection of applicant flow data for Career Development Opportunities.
- Evaluate the significant underrepresentation of demographics groups from the FY 2022 MD-715 report.

¹⁶⁵ For more information, please see: <https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce>.

¹⁶⁶ For more information, please see: https://www.epa.gov/sites/default/files/2021-05/documents/md-715_report_fy20_final_28_apr_21_signed.pdf.

- Monitor and assist the Administrator's Office and regional and program offices with implementation of EEO Actions Plans.
- Conduct assistance visits for a total of eight regional and program offices.
- Provide effective training and tools for managers to carry out their responsibilities under the MD-715.

Reasonable Accommodations (RA) Program

In FY 2023, the RA Program will work to enhance the effectiveness of services through training, policy development, and improving the support functions of the Local Reasonable Accommodation Coordinators (LORACs). In FY 2023, RA expects to engage in the following activities:

- Evaluate the procedures for providing Personal Assistant Services (PAS) to determine their effectiveness and, as necessary, revise procedures.
- Support the Agency's efforts to improve accessibility for persons with disabilities in response to EO 14035.
- Evaluate the Reasonable Accommodations Management System (RAMS) and upgrade/enhance features as necessary.
- Conduct recertification training (every three years) for the LORACs.
- Conduct assistance visits for a total of eight EPA regional and program offices.

External Civil Rights Compliance Office, Including Title VI

In FY 2023, EPA requests an additional \$11.6 million and 50.0 FTE to enforce the Nation's civil rights laws through ECRCO and the regional offices who provide support and assistance to investigate and resolve critical civil rights complaints and initiative affirmative compliance reviews. Only through a whole of EPA approach to external civil rights compliance can we achieve measurable environmental, public health, and quality of life improvements in the most overburdened, vulnerable, and underserved communities.

EPA will continue to overhaul and refocus the office to bring justice to frontline communities that experience the worst impacts of environmental pollution. EPA's *FY 2022-2026 Strategic Plan* provides the framework for the Agency to center its mission on the integration of justice, equity, and civil rights across the Nation's environmental protection enterprise. ECRCO and the OEJ will work closely to promote the integration of EJ and civil rights throughout EPA and carry out the objectives, sub-objectives, and annual and long-term goals articulated in Strategic Plan Goal 2: "Take Decisive Action to Advance Environmental Justice and External Civil Rights." In addition, to drive short term action by the end of FY 2023, EPA also established an Agency Priority Goal in its strategic plan to "Deliver tools and metrics for EPA and its tribal, state, local, and community partners to advance environmental justice and external civil rights compliance."

ECRCO will shift from being primarily reactive, responding only to complaints, to being proactive in initiating compliance activities. ECRCO will fully implement its authority to address actions, policies, and practices by recipients of EPA funding that have a discriminatory impact on overburdened and disadvantaged communities. Beginning in FY 2022 and in FY 2023, ECRCO

will continue to: initiate proactive pre-award and post-award civil rights compliance activities, including affirmative compliance reviews to address the impacts of potentially discriminatory activities on overburdened communities; develop and implement clear and strong civil rights guidance and corresponding training and technical assistance to increase recipients' compliance with civil rights laws, including on adverse disparate impacts, including in the permitting context; conduct timely and effective civil rights complaint investigations and resolutions – including investigations and informal resolution agreements that effectively address adverse disparate impacts; enhance communication and engagement with environmentally overburdened communities to meaningfully inform EPA's civil rights work and to empower and increase their participation in critical decision making; increase transparency by affirmatively providing information to the public; and strengthen federal interagency collaboration and coordination on complaints, compliance reviews, and policy guidance to enforce federal civil rights laws.

In addition, as civil rights vigilance is an Agencywide responsibility, ECRCO will work with OEJ and all EPA regional and program offices to: engage all EPA program and regional offices in civil rights compliance activities to identify whether recipient programs and activities are consistent with civil rights laws; communicate requirements and expectations to EPA staff through education, training, outreach, and technical assistance to enhance civil rights enforcement awareness and strengthen intra-agency collaboration; and include applicable civil rights requirements in EPA non-civil rights guidance, program strategic planning, environmental policy directives, rulemakings, enforcement, and siting and permitting decisions by EPA recipients.

In FY 2023, ECRCO will continue to ensure timely resolution of discrimination complaints and affirmative compliance reviews and implement Informal Resolution Agreements within the agreed-upon timeframes. Also, in FY 2023, ECRCO will continue to implement and refine the Case Resolution Manual that was reissued in FY 2021 and updated in FY 2022.

Specific ECRCO FY 2023 activities include:

- Continue to initiate affirmative civil rights compliance activities, including targeted post-award compliance reviews in environmentally overburdened and disadvantaged communities, and conduct pre-award applicant reviews that include greater accountability for applicants and recipients to ensure civil rights compliance.
- Fully implement the guidance to clarify investigative and legal standards that are applied to external civil rights claims, including how cumulative impacts will be evaluated when assessing whether an action, policy or practice, such as in the permitting context, has an unjustified disparate and adverse impact.
- Fully implement the civil rights procedural guidance for recipients.
- Fully implement the process (to be revised in FY 2022) for reviewing Form 4700-4, the "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance." These revisions will aid in ensuring compliance with baseline foundational procedural requirements that all applicants and recipients of federal funds must meet to bring all applicants and recipients into compliance, address noncompliance through voluntary means whenever possible, and take appropriate action when voluntary means are not possible.
- Continue to conduct post-award audits of submitted Form 4700-4 forms.

- Complete the Technical Assistance Video planned to be posted publicly in FY 2022, to inform recipients of their nondiscrimination program obligations.
- Continue to increase transparency by proactively providing the public with access to ECRCO case information.
- Increase coordination, communication, and engagement with environmentally overburdened and disadvantaged communities.
- Continue to enhance ADR services, including increasing ECRCO's capacity to offer services to a greater number of recipients and communities.
- Continue to strengthen interagency collaboration across the federal government to enforce federal civil rights laws.
- Develop programmatic guidance in FY 2023 to clarify that recipients must not only collect and maintain data about the composition of the communities they serve, but also evaluate and use those data to determine whether significant decisions, including permitting decisions, comply with civil rights laws.
- Develop and finalize EPA Directive/Order: Section 504 Procedures for Ensuring Meaningful Access for Persons with Disabilities to EPA Programs Services and Activities, including an EPA-Wide Disability Services Contract to ensure a clear, consistent, and well-coordinated process for ensuring meaningful access for persons with disabilities.
- Implement the "External Disability Complaint Process" that the public can use to file complaints against EPA alleging lack of meaningful access for persons with disabilities to EPA programs and activities.
- Create a Resources Page on the ECRCO website and populate with existing and new resources.
- Ensure broad dissemination of critical civil rights deliverables through partnerships with outside state, local and tribal councils, and alliances.

Performance Measure Targets:

(PM EJCR05) Percentage of state-issued permits reviewed by EPA that include terms and conditions that are responsive to environmental justice concerns and comply with civil rights obligations.	FY 2022 Target	FY 2023 Target
		TBD
(PM EJCR06) Percentage of elements completed by state recipients of EPA financial assistance toward having foundational civil rights programs in place.	FY 2022 Target	FY 2023 Target
	20	40
(PM EJCR12) Percentage of EPA programs and regions that have identified and implemented opportunities to integrate environmental justice considerations and strengthen civil rights compliance in their planning, guidance, policy directives, monitoring, and review activities.	FY 2022 Target	FY 2023 Target
	15	30
(PM EJCR13) Percentage of EPA regions and national programs that have established clear implementation plans for Goal 2 commitments relative to their policies, programs, and activities and made such available to external partners.	FY 2022 Target	FY 2023 Target
		100
(PM EJCR14) Percentage of EPA programs and regions that have implemented program and region-specific language assistance plans.	FY 2022 Target	FY 2023 Target
	30	60

(PM EJCR15) Percentage of EPA programs and regions that have implemented program and region-specific disability access plans.	FY 2022 Target	FY 2023 Target
		60
(PM EJCR16) Number of proactive post-award civil rights compliance reviews initiated to address discrimination issues in environmentally overburdened and underserved communities.	FY 2022 Target	FY 2023 Target
	3	6
(PM EJCR17) Number of audits completed to ensure EPA financial assistance recipients are complying with federal civil rights laws.	FY 2022 Target	FY 2023 Target
	25	75
(PM EJCR18) Number of information sharing sessions and outreach and technical assistance events held with overburdened and underserved communities and environmental justice advocacy groups on civil rights and environmental justice issues.	FY 2022 Target	FY 2023 Target
	8	12

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$883.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$15,781.0 / +67.5 FTE) This program change is an increase in order to increase staffing and capacity in the External Civil Rights Compliance Office, to enforce the Nation's civil rights laws and to work toward the goal of achieving measurable environmental, public health, and quality of life improvements in the most overburdened, vulnerable, and underserved communities. This investment will support activities including investigations into claims of discrimination in communities and pre-award and post-award compliance activities. This investment includes \$12.329 million in payroll.

Statutory Authority:

Title VI of the Civil Rights Act of 1964; Title IX of the Educational Amendments of 1972; Rehabilitation Act of 1973 § 504; the Age Discrimination Act of 1975, and Federal Water Pollution Control Act Amendments of 1972 § 13; Title VII of the Civil Rights Act of 1964; Equal Pay Act of 1963; Rehabilitation Act of 1973 §§ 501, 504, 505, 508; Americans with Disabilities Act of 1990; ADA Amendments Act of 2008; Age Discrimination in Employment Act (ADEA) of 1967; and Genetic Information Nondiscrimination Act (GINA).

Integrated Environmental Strategies

Program Area: Legal / Science / Regulatory / Economic Review

Goal: Tackle the Climate Crisis

Objective(s): Accelerate Resilience and Adaptation to Climate Change Impacts

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$9,614</i>	<i>\$9,475</i>	<i>\$40,912</i>	<i>\$31,437</i>
Total Budget Authority	\$9,614	\$9,475	\$40,912	\$31,437
Total Workyears	46.4	48.5	76.5	28.0

Program Project Description:

The Integrated Environmental Strategies (IES) Program advances the Agency's mission of protecting human health and the environment by focusing on cross-media environmental concerns. The IES Program provides tools, training, advice, and resources to help EPA work as a more effective organization. Nationally, IES is focused on: 1) supporting streamlining automation, oversight, and integration of EJ and climate in environmental permitting; 2) working with industrial sectors to identify and develop sensible approaches to better protect the environment and public health; 3) collaborating with partners, including federal, state, municipalities, communities, businesses, and other stakeholders, to implement locally-led, community-driven approaches to environmental protection through technical assistance, policy analysis, and training; and 4) partnering with other federal agencies, states, territories, tribes, local governments, businesses, and others to increase the resilience of the Nation to the impacts of climate change.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 1/Objective 1.2, Accelerate Resilience and Adaptation to Climate Change Impacts in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA requests an investment of \$31.4 million and 28.0 FTE for the IES Program. The Program will focus on four major areas, each presenting unique opportunities to improve delivery of environmental protection across multiple media and stakeholders. These four areas include permitting strategies, sector strategies, climate adaptation and resilience, and community-driven environmental protection.

Permitting Strategies

One way that EPA implements its statutory authority is through various permitting programs. In FY 2023, the Agency will continue to focus on working across EPA program and regional offices and with state and tribal co-regulators to support coordination, streamlining, oversight, automation, and the integration of environmental justice (EJ) and climate change for environmental permitting.

EPA will work to transition EPA's major permitting programs from paper processes to electronic processes through the automation of permit application, review, and issuance processes. Expected benefits include reduced processing time on issuing permits, decreased time between receiving monitoring data and engaging in enforcement actions, and increased transparency by allowing communities to search, track, and access permitting actions easily. Permit automation will better enable the integration of climate change and EJ considerations into permit processes and ensure that they are addressed within the terms and conditions of the permit. For the regulated community, permit automation will allow for a simplified, streamlined, and transparent permitting process, which will result in both time and cost savings.

With a renewed focus on more effective integration of EJ and climate change considerations within the Agency's several decentralized permitting programs, EPA will continue to play a leading role coordinating efforts aligned with the Administration's priorities. In FY 2023, EPA will ensure continued oversight, coordination, and support of the goals of both established authorities and new priorities that include:

- 1) Working directly with EPA's regional permitting programs to coordinate permit support for major infrastructure projects, including carbon capture/use/sequestration and renewable energy projects requiring a permit.
- 2) Supporting EPA's permitting programs to integrate EJ and climate change analysis into permit development by establishing policy, guidance, and tools for consistency and building permit writers' proficiencies in EJ and climate resilience/adaptation/mitigation.
- 3) Supporting EPA oversight, permit quality, permit timelines, and permit program integrity of delegated state/local permitting programs.
- 4) Ensuring the documentation of best practices and addressing cross-cutting permitting and policy issues (*e.g.*, Endangered Species Act and National Historic Preservation Act coordination); and, in partnership with other federal agencies, state and tribal permitting offices, continuing to streamline and gain efficiencies in the review of all permits.
- 5) Leading the expansion of a successfully piloted e-permitting application tool to other permitting program areas. The Program's vision entails working across the entire Agency on the development and implementation of an electronic permit platform for reviewing, preparing, processing, and issuing permits as well as monitoring compliance.

Smart Sectors

EPA's Smart Sectors Program (SSP) provides a platform for the Agency to collaborate with industry to develop innovative approaches to protect the environment and public health from a multi-media perspective. SSP serves as a hub for understanding and addressing sector specific environmental challenges and opportunities, facilitating dialogue with industry representatives and other stakeholders, and managing a network of SSPs in all 10 EPA regions. The Program will continue serving a liaison function to connect, convene, and facilitate discussions among agency experts and business leaders to address discrete issues unique to each sector and help that sector drive improvements that serve the Agency's greater mission of protecting human health and the environment.

In FY 2023, SSP will focus activities in three areas: broad multi-stakeholder engagement, cross-agency coordination, and policy and program initiatives as they relate to industry sectors. Multi-stakeholder engagements will provide a platform for working with industry trade associations and leading companies, as well as other stakeholders on key issues such as climate change, EJ, and infrastructure. These other stakeholders include non-governmental organizations, organized labor, the academic community, state/local governments, and overburdened and vulnerable communities with EJ concerns, as appropriate. The Program will coordinate and/or lead cross-agency, sector-based projects and activities to address the Administration's priorities, including tackling climate change, delivering EJ, and securing environmentally responsible and resilient supply chains.

Community-Driven Environmental Protection

The IES Program delivers technical assistance, training, and tools to economically distressed communities and coordinates the Agency's work with communities to increase efficiency, effectiveness, and accountability. In FY 2021, the Program delivered direct technical assistance to more than 35 communities. In FY 2022, the Program is developing new technical assistance approaches specifically focused on helping communities disproportionately impacted by the COVID-related economic downturn, attracting private investment, growing in more resilient ways, and rebuilding in a way that also improves environmental and human health outcomes. In FY 2023, EPA will deploy the tools, expertise, and technical assistance, that were piloted and deployed in FY 2022. These resources will continue to strengthen EPA's efforts to leverage public and private sector investments in support of improved economic development and environmental outcomes.

In FY 2023, the Program will continue to lead, along with the new Office of Environmental Justice, the application of community-driven solutions to local environmental challenges, focusing on the Administration's priorities, such as leveraging private investment and aligning federal investments to maximize benefits to vulnerable and underserved communities. Technical assistance and training are the cornerstones of EPA's cooperative approach to addressing environmental challenges in communities, particularly communities that are economically distressed. In FY 2023, the Program will continue to prioritize technical assistance, capacity building and training, with the objective of helping communities as well as tribal, state, and local governments increase their capacity to protect the environment while growing their economies, creating jobs, using public and private sector investments and other resources more efficiently, and promoting more equitable approaches to development. Where appropriate, EPA will partner with other agencies to help achieve locally led, community-driven approaches to protecting air, land, and water, while at the same time supporting equitable economic revitalization.

In FY 2023, the Program will continue analyses on emerging trends, innovative practices, and tools that support equity, climate resilience, Greenhouse Gas (GHG) reduction, and clean air, land, and water outcomes. EPA will continue to develop tools to help interested communities incorporate innovative, equitable approaches to infrastructure and land development policies. This assistance helps deliver on multiple economic, community, and human health goals embedded in EPA's core mission, including managing stormwater, improving local air and water quality, cleaning up and reusing previously developed sites, and supporting revitalization and

redevelopment in economically distressed communities to create economic opportunities while reducing GHG emissions and protecting the environment.

Climate Adaptation Program

EPA is committed to identifying and responding to the challenges that a changing climate pose to human health and the environment. The goal of the Climate Adaptation Program is to ensure the Agency continues to fulfill its mission of protecting human health and the environment even as the climate changes and disruptive impacts increase.

In FY 2023, the Program will focus on integrating climate adaptation into EPA's programs and regions, policies, rules, financial mechanisms, and operations to ensure they are effective even as the climate changes, while the Agency also works to reduce GHG emissions. The Program will guide implementation of the 2021 EPA Climate Adaptation Action Plan, including advising and monitoring progress made by EPA National Program Offices and Regional Offices in integrating climate adaptation into their work. The Program will report on progress made using performance measures and targets identified in program and regional office Implementation Plans. Managers and staff at EPA will be trained on how to integrate climate adaptation into their work.

In FY 2023, the Program will develop decision-support tools and technical assistance to improve the effectiveness of decisions sensitive to climate change and related EJ considerations. These tools will empower EPA staff and their partners to consider climate, as well as changes in social and economic conditions that are influenced by climate change, and to identify strategies that will yield co-benefits. Such co-benefits include reductions in GHGs and other pollutants, improved public health, economic growth and job creation benefits, and national security and EJ benefits that will be central to building a more resilient future.

In FY 2023, the Program will strengthen the adaptive capacity of states, tribes, territories, local governments, EJ organizations, community groups, and businesses, with a particular focus on advancing EJ, by increasing the number EPA has assisted, through grants or technical assistance to 1) develop or update their climate resilience/adaptation plans, and/or 2) implement an action to anticipate, prepare for, and adapt to climate change. Particular attention will be given to ensuring that the outcomes of investments made with funds from the Infrastructure Investment and Job Act will be resilient to the impacts of climate change, as well as support climate mitigation goals. The Agency's partners share responsibility for protecting human health and the environment, and partnerships with EPA are at the heart of the Nation's environmental-protection system.

The desire is to empower communities and tribes across the Nation to manage the risks of climate change as we strive to attain the Agency's mission. The Program will produce and deliver training, tools, technical assistance, financial incentives, and information, so our partners can adapt to and increase resilience to climate change. The Program also will support federally recognized tribes in incorporating climate adaptation into at least one program supported by an EPA grant.

Lastly, EPA will provide financial incentives through grant programs to support climate-resilient investments in communities across the Nation. Certain parts of the population, such as communities of color, low-income communities, children, the elderly, tribes and indigenous

people, and small rural communities, can be especially vulnerable to the impacts of climate change. To that end, the Program will engage the most overburdened and vulnerable communities to improve their capacity to anticipate, prepare for, and adapt to or recover from climate change impacts.

Performance Measure Targets:

(PM AD07) Number of priority actions completed in EPA's Climate Adaptation Action Plan and Program and Regional Implementation Plans.	FY 2022 Target	FY 2023 Target
	100	100
(PM AD08) Number of EPA national program offices that have developed adaptation training for programs and staff.	FY 2022 Target	FY 2023 Target
	4	10
(PM AD09) Cumulative number of federally recognized tribes assisted by EPA to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change.	FY 2022 Target	FY 2023 Target
	100	150
(PM AD10) Cumulative number of states, territories, local governments, and communities (i.e., EPA partners) assisted by EPA to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change.	FY 2022 Target	FY 2023 Target
	250	300
(PM AD11) Number of tribal, state, regional, and/or territorial versions of the Climate Change Adaptation Resource Center (ARC-X) or similar systems developed by universities with EPA support.	FY 2022 Target	FY 2023 Target
	3	6
(PM AD12) Hours of appropriate subject matter expert time provided by EPA to help communities adapt to climate impacts, build long-term resilience, and support the most underserved and vulnerable communities after federally declared disasters.	FY 2022 Target	FY 2023 Target
	No Target Established	No Target Established
(PM PAT) Percentage of EPA permitting processes automated.	FY 2022 Target	FY 2023 Target
		10
(PM CO1) Percentage of technical assistance projects in support of environmentally sustainable and community-driven revitalization that support or expand upon previous or ongoing federal investments.	FY 2022 Target	FY 2023 Target
		TBD

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$289.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,888.0 / +6.0 FTE) This program change is an increase to support the coordination, streamlining, oversight, automation, and integration of EJ and climate change into environmental permitting. This investment includes \$1.1 million in payroll.

- (+\$19,985.0 / +12.0 FTE) This program change is an increase provided for Climate Adaptation to strengthen the adaptive capacity of states, tribes, territories, local governments, communities, and businesses. This investment includes \$2.18 million in payroll.
- (+\$8,275.0 / +10.0 FTE) This program change is an increase to support core program capacity that is central to the Agency's mission. These resources will build the program by addressing the Administration's priorities, adhering to the goals of the *FY 2022 – 2026 EPA Strategic Plan*, with attention to the urgency of climate change. This investment includes \$1.8 million in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute); National Environmental Policy Act; CAA § 309; Endangered Species Act; National Historic Preservation Act; Archaeological and Historic Preservation Act; Fishery Conservation and Management Act; Fish and Wildlife Coordination Act; and Title 41 of the Fixing America's Surface Transportation Act.

Legal Advice: Environmental Program

Program Area: Legal / Science / Regulatory / Economic Review
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$55,700</i>	<i>\$49,595</i>	<i>\$76,855</i>	<i>\$27,260</i>
Hazardous Substance Superfund	\$1,161	\$443	\$461	\$18
Total Budget Authority	\$56,862	\$50,038	\$77,316	\$27,278
Total Workyears	257.6	263.9	316.5	52.6

Total workyears in FY 2023 include 8.8 FTE funded by TSCA fees and 17.1 FTE to support Legal Advice working capital fund (WCF) services.

Program Project Description:

The Legal Advice: Environmental Program provides legal representational services, legal counseling, and legal support for all the Agency's environmental activities. The legal support provided by this program is essential to the Agency's core mission. The personnel assigned to this program represent essential expertise in the critical fields that EPA relies on for all decisions and activities in furtherance of its mission: to protect human health and the environment.

The Program provides legal counsel on every major action the Agency takes. It plays a central role in all statutory and regulatory interpretation of new and existing rules, as well as rule and guidance development under EPA's environmental authorities. The Program also provides essential legal advice for every petition response, judicial response, and emergency response. When the Agency acts to protect the public from pollutants or health-threatening chemicals in the air we breathe, in the water we drink, or in the food we eat, the Program provides counsel on the Agency's authority to take that action. The Program then provides the advice and support necessary to finalize and implement that action. When that action is challenged in court, the Program defends it, in coordination with the Department of Justice (DOJ). The Program also supports EPA's National Freedom of Information Act (FOIA) Office, as part of the legal services activity within the Agency's Working Capital Fund.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an investment of 52.6 FTE and \$27.3 million to strengthen and assist EPA's environmental programs in tackling the climate crisis; advancing environmental justice; responding to coal combustion residuals (CCR) actions and rulemakings and emerging issues like per- and polyfluoroalkyl substances (PFAS); supporting Toxic Substances and Control Act (TSCA) implementation; and enhancing transparency. During the past several years EPA's Office of General Counsel's (OGC) workload continues to significantly outpace staffing resources

The Program also will work on vital new Administration priorities including regulatory changes, climate, and environmental justice and will continue to provide legal representation in judicial and administrative litigation. The Program also will provide counseling outside of the litigation context in the highest priority issues arising under all the environmental statutes administered by EPA.

In FY 2023, the Agency will continue to focus on its core mission to apply the most effective approaches by implementing EPA's environmental programs under the Comprehensive Environmental Response, Compensation & Liability Act, Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Toxic Substances and Control Act, Federal Insecticide Fungicide and Rodenticide Act, Food Quality Protection Act, Safe Drinking Water Act, and other authorities. This strategy will help ensure that human health and the environment are protected, including clean air, water, and land, and safe chemicals and pesticides.

EPA also will continue to strengthen its implementation of FOIA to enhance transparency, build public trust in Agency actions, and support public participation by working to achieve the *FY 2022-2026 EPA Strategic Plan* long-term performance goal to eliminate the backlog of overdue FOIA responses.

Finally, the Program includes the OGC Ethics Program which bolsters all of the principles articulated in the *FY 2022-2026 EPA Strategic Plan*. Public trust in the integrity of EPA's scientific and legal efforts necessarily depends upon all EPA employees faithfully carrying out their official duties ethically and impartially.

Legal counseling resources continue to be in high demand to support the Agency's response to states seeking assistance developing or implementing environmental programs, industrial facilities seeking permits to allow them to undertake new economic activity or continue existing activity, and citizens seeking actions to protect local environmental quality, among other things. The Program will prioritize resources after supporting judicial and administrative litigation to counsel agency clients on these matters.

The following are examples of recent accomplishments and work being completed to illustrate this program's role in implementing the Agency's core mission:

- EPA's Water Law Office (WLO) has provided critical legal support for implementing Executive Order 13990, *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*¹⁶⁷ (86 Fed. Reg. 7037 January 25, 2021-EO 13990), under which EPA and the Army Corps of Engineers reviewed, reconsidered, and decided to undertake rulemaking to replace the previous Administration's definition of "waters of the United States" under the Clean Water Act. WLO expects to continue its work on legal issues associated with this agency priority in FY 2023, including supporting the Solicitor General's Office in addressing the *Sackett* petition in the Supreme Court. Additionally, WLO also has provided critical legal support for the decision to reconsider and revise the Agency's 2020 rule implementing CWA section 401.

¹⁶⁷ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

- EPA's Pesticides and Toxic Substances Law Office (PTSLO) continues to provide critical legal advice in support of EPA's implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which modernized and substantially overhauled the TSCA. PTSLO also provides substantial support to the Office of Pesticide Programs in its activities related to the operation of a national licensing program for pesticides sold and used in the United States, which involves the issuance of hundreds of reviewable final agency actions each year, including the grant of new pesticide registrations; amendments to existing pesticide registrations; new or amended tolerance regulations authorizing the presence of specific levels of pesticide residues on food sold in the United States; determinations related to the statutorily-mandated review of all existing pesticide registrations; state special local needs registrations; and emergency exemptions from the requirements of the pesticide statute.
- EPA's Air and Radiation Law Office (ARLO) has played a key role in implementing the American Innovation and Manufacturing (AIM) Act. ARLO attorneys played a critical role in helping EPA propose and finalize its first set of regulations implementing the AIM Act, which Congress passed in December of 2020. This law requires the phase down of Hydrofluorocarbons (HFCs), a potent class of greenhouse gases. ARLO also has played a key role in developing a rulemaking to regulate emissions from the oil & natural gas industry under Clean Air Act section 111, which requires EPA to regulate emissions from source categories that endanger public health or welfare as well as defending EPA's authority to effectively regulate greenhouse gas emissions from the power sector under Clean Air Act section 111. Additionally, ARLO played a key role in a number of recent actions to reduce greenhouse gas emissions from vehicles and will work closely with the Department of Justice to defend the recent light duty vehicle and aircraft greenhouse gas actions.
- EPA's Solid Waste and Emergency Response Law Office (SWERLO) provided critical legal advice on multiple EPA actions to protect communities and hold facilities accountable for controlling and cleaning up the contamination created by decades of coal ash disposal, which can pollute waterways, groundwater, drinking water, and the air. The actions advance the Agency's commitment to protecting groundwater from coal ash contamination and include: 1) proposing decisions on requests for extensions to the current deadline for initiating closure of unlined Coal Combustion Residuals (CCR) surface impoundments; 2) putting several facilities on notice regarding their obligations to comply with CCR regulations; and 3) laying out plans for future regulatory actions to ensure coal ash impoundments meet strong environmental and safety standards. SWERLO served as the Agency lead in D.C. Circuit litigation, including a challenge to the CCR Part A rule and a separate challenge to the approval of the Oklahoma CCR state program. SWERLO provided a significant amount of critical legal advice on a top Administration priority of addressing PFAS contamination. Additionally, SWERLO represented EPA's interests in the development of the U.S. litigating position in defensive litigation related to PFAS contamination at military bases.
- EPA's Cross-Cutting Issues Law Office (CCILO) is providing specialized legal and tactical expertise in legal counseling on a range of administrative law matters related to

implementing the President’s agenda, including reviewing, revising, and rescinding rules and guidance issued under the prior Administration. CCILO also has provided critical legal support to advance the Administration’s Environmental Justice goal. CCILO provided critical legal support to the Council on Environmental Quality (CEQ) to set up the White House Environmental Justice Advisory Counsel, and counsel on paperwork reduction issues to allow CEQ to adopt EPA’s Paperwork Reduction Act for the Climate and Environmental Justice Screening Tool. CCILO also led the offer to update EJ Legal Tools to incorporate new and revised environmental and civil rights statutes to advance environmental justice. Finally, CCILO continues to support the Administration’s Memorandum on Tribal engagement in a variety of contexts, including in the context of addressing the inequity to Oklahoma tribes created by the SAFETEA decision.

- EPA’s National Freedom of Information Office (NFO) provided legal advice and support to the agencywide FOIA Program by reducing more than 24 percent of EPA’s backlog of overdue FOIA responses during FY 2021, down to 1,056 from 1,395 at the start of the fiscal year; undertook the initial review, and assignment of 6,531 FOIA requests; processed 253 applications for expedited response; and processed 974 applications for fee waivers. NFO also processed and closed more than 1,756 FOIA requests and issued new agencywide FOIA Policy and FOIA Procedures.
- The Ethics Office is solely responsible for assigning, reviewing, and certifying public financial disclosure reports and periodic transaction reports. These reports are due in quarter 3 of the fiscal year, and the OGC Ethics Program received more than 730 reports. Of these, 98 percent were reviewed on time and 96 percent were certified on time. EPA’s Ethics Program remains committed to the continuous improvement of accountability in its programs and employee compliance with ethics laws and regulations.

Performance Measure Targets:

(PM FO2) Number of FOIA responses in backlog.	FY 2022 Target	FY 2023 Target
	845	634

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$9,431.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$14,098.0 / +37.6 FTE) This program change addresses a need for increased defensive litigation work in multiple environmental statutes, legal work in pesticides and toxics, and legal support for emerging issues like PFAS. This investment provides additional funding for essential core workforce support costs and includes \$8.726 million in payroll. These additional resources also will assist EPA in tackling the climate crisis and securing environmental justice.

- (+\$3,485.0 / +14.0 FTE) This program change is an increase for legal counseling and support for CCR actions and rulemakings. This investment includes \$3.249 million in payroll.
- (+\$246.0 / +1.0 FTE) This program change is an increase for legal support for TSCA implementation. This investment includes \$232.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA’s organic statute).

Legal Advice: Support Program

Program Area: Legal / Science / Regulatory / Economic Review
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$16,645</i>	<i>\$15,865</i>	<i>\$18,892</i>	<i>\$3,027</i>
Total Budget Authority	\$16,645	\$15,865	\$18,892	\$3,027
Total Workyears	80.2	89.2	89.2	0.0

Total workyears in FY 2023 include 5.6 FTE funded by TSCA fees.

Program Project Description:

The Legal Advice: Support Program provides legal representational services, legal counseling, and legal support for all activities necessary for EPA's operations. The Program provides legal counsel and support on a wide variety of issues and plays an important role in meeting and addressing legal support for work under the Civil Rights Statutes, contracts, grants, employment law, and Freedom of Information Act (FOIA) requirements. It provides critical counseling on a range of Information Law, Employment and Labor Law, Intellectual Property Law, Appropriations and National Security Law matters. With enhanced FOIA implementation, community consultations and other public participation opportunities, the beneficiaries of environmental protection – the American people including environmental justice (EJ) communities – will be able to engage more meaningfully through their communities, local governments, and state and tribal governments.

For example, if an EPA program office needs guidance on the legal parameters around giving grants, how to respond to a FOIA request, whether it may spend money on a certain activity, or what to do when a tort claim is filed with the Agency, this program provides answers, options, and legal advice. Additionally, the Program provides comprehensive advice on civil rights issues including equal protection. The Program provides counsel and advice for settlement on Equal Employment Opportunity mediations and counsels on a range of sensitive and complex national security law matters. The Program also supports EPA in maintaining high professional standards and in complying with all laws and policies that govern the Agency's operations.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an investment of \$3.0 million to strengthen EPA's Legal Advice: Support Program. In FY 2023, EPA will continue to address and manage information requests, legal support for work under the Civil Rights Statutes, and employment law. There also is an ongoing need for a high level of involvement in questions related to contracts, ethics, grants, finance, appropriations, and employment.

The resources in this program are critical to maintain basic legal services for EPA. During the past several years, the Legal Advice: Support Program workload has outpaced staffing resources. Defending lawsuits on matters ranging from FOIA to torts to contracts to employment law is vital to ensure the Agency continues to be responsive to the public. The Agency's focus on responding to our significant FOIA workload and increasing our responsiveness to requesters has correspondingly increased the work of the FOIA attorneys. EPA's Federal Tort Claim Act portfolio also has increased with incredibly complex, billion-dollar cases such as Flint and Gold King Mine, which require significant resources. Further, the Civil Rights lawyers have a critical role to play in "Affirmatively advancing equity, civil rights, racial justice, and equal opportunity", pursuant to Executive Order 13985 (January 21, 2021).¹⁶⁸

The following are examples of FY 2021 accomplishments:

- Provided ongoing agencywide legal support to address questions regarding the use of appropriated funds in unusual remote work environments due to the COVID-19 global pandemic, including the use of appropriated funds for vaccines and associated travel issues. Provided critical employment law advice and assistance in navigating a series of COVID related issues. This legal support also included providing extensive counsel to the Office of Grants and Debarment in updating guidance to agency programs in providing administrative relief to financial assistance recipients impacted by the COVID-19 response. The Office of Grants and Debarment (OGD) guidance was in furtherance of governmentwide administrative relief authorized by OMB and more specific EPA programmatic relief extended to recipients on a case-by-case basis. The Agency's primary guidance took the form of internal and external FAQs in addition to consultation to respond to specific questions raised by recipients across the country.
- Provided critical legal counsel and assistance to the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) Program by providing legal sufficiency review and concurrence for all loans in the WIFIA Program.
- Engaged in extensive and significant technical legislative drafting assistance for the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58). The proposed legislation includes approximately \$60 billion in proposed infrastructure funding for EPA projects across the Nation. Technical legislative drafting assistance and legal counseling on the scope of activities authorized in final legislation also was provided in support of the American Rescue Plan Act of 2021¹⁶⁹ which included \$100 million in grant funding for the Office of Air and Radiation and the Office of Environmental Justice to implement assistance programs; Urban Waters; and EJ-related Clean Air Act authorities.
- Created and beta tested training on how to promote diversity and comply with the Equal Protection Clause in support of E.O. 13985. Beta testing is continuing into fiscal year 2022.

¹⁶⁸ For additional information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁶⁹ For additional information, please refer to: <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

- Engaged with EPA program offices' efforts to advance Diversity, Equity, Inclusion and Accessibility (DEIA), as well as EJ by providing legal counsel, including risks assessments and the identification of pragmatic solutions, designed to position these efforts to have longevity. Also created and deployed multiple due process training sessions to explain the legal framework and how operating within this legal terrain will make all DEIA and EJ efforts sustainable. This diverse and varied work will continue into FY 2023.
- Provided essential counseling on employment and labor law matters associated with the Administration's transition; other employment law matters, including Equal Employment Opportunity mediations; a range of sensitive and complex national security law matters; and key confidential business information issues, including several rulemakings.
- Significantly furthered EPA's duties under the Toxic Substances Control Act (TSCA) by completing almost 2,400 Confidential Business Information (CBI) determinations on claims submitted in FY 2021.
- Defended the Agency in more than 60 Freedom of Information Act (FOIA) cases and more than 70 employment law matters. Completed 149 FOIA administrative appeals, eliminating the Agency's appeals backlog.
- Litigated and successfully resolved information law and employment law cases. Trained hundreds of management officials throughout the Agency on employment laws.

Performance Measure Targets:

Work under this program supports performance results in the Legal Advice: Environmental Program under the EPM appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$2,388.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$639.0) This program change is an increase to support Legal Advice: Support Program projects, with a priority for work related to defending the increase in litigation, addressing civil rights issues including External Civil Rights and equal protection, advising on FOIA requests, and ensuring the agencies work in contracts, grants, and appropriations is handled in accordance with the law.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

Regional Science and Technology

Program Area: Legal / Science / Regulatory / Economic Review
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$466</i>	<i>\$638</i>	<i>\$4,923</i>	<i>\$4,285</i>
Total Budget Authority	\$466	\$638	\$4,923	\$4,285
Total Workyears	0.5	1.7	6.7	5.0

Program Project Description:

EPA's Regional Science and Technology (RS&T) Program provides direct support to multiple programs for the Agency including implementing the Resource Conservation and Recovery Act (RCRA); Toxic Substances Control Act (TSCA); Clean Water Act (CWA); Safe Drinking Water Act (SDWA); Clean Air Act (CAA); and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The RS&T Program supports the Agency's strategic goals by performing laboratory analysis, and mobile laboratory services to provide credible scientific data on environmental pollutants and conditions to Agency decision makers. The RS&T Program also assists state environmental agencies by providing specialized technical assistance including assistance to tribal communities to help build tribal capacity for environmental monitoring and assessment.

The RS&T Program provides essential expertise and scientific data for a wide array of environmental media, including ambient air; surface, drinking, and ground water; soil and sediment; solid and hazardous waste; and biological tissue. This work focuses on the immediate scientific information needed to make short-term local decisions. A strategic strength of the Regional Laboratory Network (RLN) is its ability to respond to events requiring surge capacity. In the event of an emergency or large-scale project, regional laboratories work together to leverage the strengths and capacities of individual lab facilities and deploy mobile laboratory services where needed.

Extreme weather events often disproportionately affect vulnerable populations including fence line communities most closely adjacent to chemical facilities. As extreme weather events increase in frequency, the public expectation for a rapid and effective response will continue to grow over time. These events often require assistance from the regional laboratory network for quick turnaround sample analyses as well as technical support. When extreme weather events occur, local area laboratories can become overwhelmed. For example, the response to winter storm Uri in 2021 required Region 4 and Region 7 to play a critical role in support of urgent analytical results needed in Region 6 to assist communities whose drinking water was threatened.¹⁷⁰

¹⁷⁰For more information please see: <https://www.epa.gov/sciencematters/epa-deploys-mobile-labs-work-texas-restore-drinking-water-systems>.

The RS&T Program provides support for areas such as environmental biology, microbiology, chemistry, field sampling, enforcement and criminal investigations, and quality assurance, as well as support for special or non-routine analytical requests that EPA cannot readily obtain from other sources within required timeframes. Funding for scientific equipment under this program is essential for maintaining high level capabilities in EPA regional laboratories. New and improved technology strengthens science-based decision-making for regulatory efforts, environmental assessment of contaminants, and development of critical and timely environmental data in response to accidents and natural or man-made disasters. As technology improves, the sensitivity of equipment advances to detect lower levels of contaminants. Newer, more advanced instrumentation improves environmental data collection and laboratory analytical capability.

FY 2023 Activities and Performance Plan:

Work in this Program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022-2026 EPA Strategic Plan*.

In FY 2023, resources will continue to support regional implementation of the Agency's statutory mandates through fixed and mobile laboratory operations for environmental sampling, monitoring and enforcement compliance support. Resources improve timely decision-making in regional program management and implementation of regulatory work across all media and enable the Agency to address environmental issues specific to geographic areas (e.g., energy extraction, mining, wood treating operations, specialty manufacturing), natural disasters (e.g., Winter Storm Uri), and homeland security threats.

In FY 2023, regional laboratories will continue to coordinate within the Regional Laboratory Network to provide needed expert analytical services. The regional laboratories have the capability to analyze a full suite of contaminants using an array of established methods, including regulatory or guidance methods such as the RCRA, CWA and SDWA methods. Laboratories also utilize new methods based on immediate needs or circumstances. These efforts help support the underserved communities that benefit from response times for both routine and enforcement sample analyses related to brownfield sites in urban areas where legacy contamination persists. Since brownfield sites tend to be in densely developed, centralized locations, redevelopment in these areas lead to multiple positive outcomes in urban communities including reducing exposure to toxic chemicals, increased access to green space and reducing vehicle miles driven due to more efficient home/work travel patterns.¹⁷¹

In FY 2023, a new investment will provide for replacement and upgrading of aging analytical equipment and modernization of associated critical IT infrastructure. This will support the risk identification and assessment associated with pesticides, organic chemicals, and other high-risk chemicals, as well as support the Agency's science priorities related to informing communities at risk from increasing challenges from climate change, chemical exposures, and aging infrastructure. The Agency's mission to protect human health and the environment often requires the availability of scientific data at lower detection levels, which requires specialized equipment. Almost all

¹⁷¹ For mor information please see: <https://www.epa.gov/brownfields/brownfields-program-environmental-and-economic-benefits>.

scientific instrumentation is computer-controlled or interfaced. As computer technology improves, instrument efficiencies and sensitivity also improve – these advances in technology leading to lower detection levels of contaminants are essential for some compounds where health-based risk levels are decreasing (e.g., hexavalent chromium). When measuring for these compounds, the instrument detection levels need to be as low as technically feasible, requiring laboratories to modify an existing method, modify existing equipment, or purchase newer instrumentation.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$40.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$503.0) This increase will be used to support regional implementation of the Agency's statutory mandates through fixed and mobile laboratory operations for environmental sampling, monitoring and enforcement compliance support
- (+\$3,742.0 / +5.0 FTE) This new investment will be used to replace and upgrade aging analytical equipment and modernize associated critical IT infrastructure necessary to meet increasing demands for immediate scientific information needed to make short-term local decisions. This investment includes \$792.0 thousand in payroll.

Statutory Authorities:

Resource Conservation and Recovery Act (RCRA); Toxic Substances Control Act (TSCA); Clean Water Act (CWA); Safe Drinking Water Act (SDWA); Clean Air Act (CAA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Pollution Prevention Act (PPA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

Regulatory/Economic-Management and Analysis

Program Area: Legal / Science / Regulatory / Economic Review

Goal: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective(s): Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$13,850</i>	<i>\$12,421</i>	<i>\$16,247</i>	<i>\$3,826</i>
Total Budget Authority	\$13,850	\$12,421	\$16,247	\$3,826
Total Workyears	66.5	72.5	76.0	3.5

Program Project Description:

The Regulatory/Economic, Management, and Analysis Program is responsible for reviewing the Agency's regulations to ensure that they are developed in accordance with the governing statutes, executive orders, and Agency commitments and are based on sound technical, economic, scientific, and policy assumptions. Further, the Program ensures consistent and appropriate economic analysis of regulatory actions, conducts analyses of regulatory and non-regulatory approaches, and considers interactions between regulations across different environmental media. The Program provides all technical support to the Interagency Working Group on the Social Cost of Greenhouse Gases (GHGs) to develop final SC-CO₂, SC-N₂O and SC-CH₄ values required under Executive Order (EO) 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*.¹⁷² The Program helps to implement the President's Memorandum on *Modernizing Regulatory Review*¹⁷³ and EO 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*¹⁷⁴ by developing appropriate modeling, data, and analysis to inform the consideration of environmental justice (EJ) concerns in regulatory and non-regulatory actions. The Program ensures the Agency's regulations comply with statutory and EO requirements, including the Congressional Review Act,¹⁷⁵ the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act),¹⁷⁶ and EOs 12866, *Regulatory Planning and Review*¹⁷⁶ and 13563, *Improving Regulation and Regulatory Review*¹⁷⁷ regarding the Office of Management and Budget (OMB) regulatory

¹⁷² For more information on the Memorandum Modernizing Regulatory Review, please see:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

¹⁷³ For more information on EO 13985, please see: <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

¹⁷⁴ For more information on the Congressional Review Act, please see Subtitle E: <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf>.

¹⁷⁵ For more information on the Regulatory Flexibility act, please see: <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg1164.pdf>, and as amended by the Small Business Regulatory Enforcement and Fairness Act, please see: <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf>.

¹⁷⁶ For more information on EO 12866 Regulatory Planning and Review, please see <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

¹⁷⁷ For more information on EO 13563 Improving Regulation and Regulatory Review, please see: <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>.

review. The Program manages the development and deployment of EPA's economy-wide model for analyzing the economic impacts of environmental regulations. The Program also includes the Agency's Chief Statistical Official charged with implementing major elements of the *Foundations for Evidence Based Policy Act*.¹⁷⁸

FY 2023 Activities and Performance Plan:

Work in this program directly supports Strategic Goal 2/Objective 2.2, Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities in the *FY 2022 - 2026 EPA Strategic Plan*.

The Program assists the Administrator and other senior agency leaders in implementing regulatory policy priorities.

In FY 2023, EPA will continue its efforts to assess and review the benefits and costs to communities, businesses, government entities, and the broader economy associated with each economically significant regulatory action to maximize the net benefits of policies protecting human health and the environment. EPA will conduct and integrate analysis of EJ concerns in the rulemaking process to address the Administration's priorities. EPA will collect data and build models to assess regulatory proposals and their impacts on benefits, economic performance, and EJ. Planned key program activities in FY 2023 include:

- Represent EPA on, and prepare information and analyses for, the Interagency Working Group on the Social Cost of GHGs, engage the public, stakeholders, and experts to provide recommendations for reviewing, and, as appropriate, updating, the social cost of carbon (SC-CO₂), social cost of nitrous oxide (SC-N₂O), and social cost of methane (SC-CH₄) to ensure that these costs are based on the best available economics and science.
- Represent EPA in recommending improvements to modernize the regulatory review process to promote policies that reflect new developments in scientific and economic understanding, fully accounts for regulatory benefits that are difficult or impossible to quantify and does not have harmful anti-regulatory or deregulatory effects. Develop procedures that consider the distributional consequences of regulations as part of any quantitative or qualitative analysis of the benefits and costs of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden underserved, vulnerable, or marginalized communities across all life stages.
- Support EPA's Chief Statistical Official, who will provide technical support for projects under EPA's Learning Agenda, evaluation plan, and capacity assessment; design statistically sound policy analyses and evaluations; assist in the continued development of EPA's Learning Agenda; and promote a culture of evidence-based decision making.
- Conduct training for EPA regulatory staff on a broad range of topics, including EPA's internal Action Development Process, developing EJ analysis for rulemakings, updated

¹⁷⁸ For more information, please see: <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

Guidelines for Preparing Economic Analyses, and Congressional Review Act requirements to help ensure that rules meet policy goals and address legal and administrative requirements and are informed by high quality EJ and economic analyses.

- Expand analytic capabilities for conducting EJ analyses for rulemaking through development of flexible analytic tools and novel datasets.
- Implement EPA's updated EJ technical guidance, including new additions on addressing how the EJ analysis can be used to inform policy options to address EJ implications of rulemaking, and newer techniques and approaches to conducting EJ analyses.
- Release an updated version of *EPA's Guidelines for Preparing Economic Analyses*, revised to incorporate updated analytic requirements and practices developed under the President's Memorandum on *Modernizing Regulatory Review*¹⁷⁹ and the recommendations from the Science Advisory Board's peer review. The updated guidelines will help ensure that EPA's economic analyses provide a complete accounting of the economic benefits, costs and impacts of regulatory actions, including distributional consequences, and are consistent across EPA programs.
- Deploy a model of the U.S. economy so that EPA routinely assesses how regulations affect the economy, including distributional impacts, costs, and broader macro-economic performance. EPA will update the model consistent with recommendations from EPA's Science Advisory Board, deploy the model in regulatory analyses where appropriate, and continue the development of open-source data resources to support transparent analyses. This model will provide critical evidence-based analyses to inform decision making.
- Continue to manage EPA's response to recently issued EOs, particularly with an eye toward identifying previous regulatory actions that are not consistent with current policies and working to develop new actions that constructively advance current policy positions.
- Review economic analyses prepared by EPA to ensure compliance with statutory and other related requirements. Provide the Administrator and the public with high-quality analyses of the costs, benefits, and impacts on jobs, businesses, and communities of major regulatory proposals to better inform decision-making and ensure transparency about the consequences of regulation.¹⁸⁰
- Apply the best modeling tools to assess the economic effects of approaches that reduce climate pollution in every sector of the economy, deliver EJ, and spur well-paying union jobs and economic growth, including methods designed to examine how alternative regulatory options affect employment. Continue development of open-source data and economic models, including sector-specific cost models, to support these efforts in a manner that maximizes the transparency of these EPA analyses.

¹⁷⁹ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

¹⁸⁰ For more information, please see: <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>.

- Continue development of a modeling platform capable of assessing the benefits of national regulations that affect water quality. This effort will provide important evidence-based data and analyses, consistent with economic science best practices, to inform decision making.
- Strengthen available data and methods to estimate the monetized benefits of health outcomes of chemical exposures, water pollution, and air pollution for use in EPA's benefit cost analyses.
- Continue to develop EPA's semiannual unified Regulatory Agenda and manage EPA's compliance with the Congressional Review Act.¹⁸¹
- Manage EPA's internal Action Development Process and expand and upgrade regulatory planning and tracking tools to facilitate timely decisions and coordination across programs, on multimedia regulatory and policy issues such as Per- and Polyfluoroalkyl Substances (PFAS), climate, and EJ. Review all regulatory actions prior to signature by the EPA Administrator to ensure Agency actions are of consistently high quality and supported with strong analysis.
- Serve as EPA's liaison with the Office of Information and Regulatory Affairs within OMB.
- Serve as EPA's liaison with the Office of the Federal Register by reviewing, editing, and submitting documents for publication, so that the public, states, other agencies, and Congress are informed about EPA's regulatory activities in a timely manner.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$811.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,356.0 / +2.0 FTE) This program change is an increase to support the Administration's goal to tackle the climate crisis and ensures consistent and appropriate economic analysis of regulatory actions including advancement of the Social Cost of Greenhouse Gases (SC-GHG). The investment includes \$363.0 thousand in payroll.
- (+\$659.0 / +1.5 FTE) This program change is an increase to support cross-agency coordination, analysis, and review of regulatory activity across statutory programs. A

¹⁸¹ For more information on the Congressional Review Act, please see: <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf>.

particular emphasis is to be placed on pending climate regulations. This investment includes \$273.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA’s organic statute).

Science Advisory Board

Program Area: Legal / Science / Regulatory / Economic Review
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$3,422	\$3,205	\$3,981	\$776
Total Budget Authority	\$3,422	\$3,205	\$3,981	\$776
Total Workyears	16.1	18.7	18.7	0.0

Program Project Description:

EPA's Science Advisory Board Staff Office (SABSO) manages two Federal Advisory Committees. Congress established the Agency's Science Advisory Board (SAB) in 1978, under the Environmental Research, Development, and Demonstration Act, to advise the Administrator on a wide range of highly visible and important scientific matters. The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act Amendments of 1977 to provide independent advice to the EPA Administrator on the technical bases for EPA's National Ambient Air Quality Standards (NAAQS). The SAB and the CASAC, both statutorily mandated chartered Federal Advisory Committees, draw from a balanced range of non-EPA scientists and technical specialists from academia, states, independent research institutions, and industry. The Program provides management and technical support to these advisory committees. The Committees provide EPA's Administrator independent advice and objective scientific peer review on the technical aspects of environmental issues as well as the science used to establish criteria, standards, regulations, and research planning, as requested.¹⁸²

In FY 2021, the SAB produced three scientific peer reviews while CASAC was not active. In March 2021, both the SAB and CASAC proceeded to reset membership (at the direction of the Administrator) to ensure the Board and Committee returned to its original, transparent process, and had adequate experts with the disciplines to align with the Agency's strategic priorities and forthcoming work. The temporary suspension explains the decrease of completed peer reviews from a combined 13 products the year prior, when the SAB produced two consultations and nine scientific peer reviews, and the CASAC produced two scientific peer reviews.

Since SABSO provides an in-house resource for EPA peer reviews, the Program costs are low in comparison to external peer review conducted by groups such as the National Academy of Sciences (NAS). Furthermore, agency costs have been significantly lower for virtual meetings due to the COVID-19 pandemic compared to face-to-face meetings.

¹⁸² For more information, please see: <http://www.epa.gov/sab/> and <http://www.epa.gov/casac/>.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

Using the best available science and a credible, defensible, and transparent scientific process to support sound regulatory actions is a cornerstone value of the EPA. SABSO supports the EPA's mission by conducting independent, scientific, public, peer reviews of some of the most challenging regulatory and science-based topics facing EPA and America. In FY 2023, SABSO anticipates completing 14 to 16 peer reviews, consultations, and regulatory reviews in accordance with the Biden Administration's science and policy agenda, commitment to scientific integrity, environmental justice (EJ), and public transparency. In FY 2023, the CASAC is expecting completing reviews of NAAQS for several critical pollutants. These reviews will include the reconsideration of ozone as well as Nitrogen Oxides (NOx), Sulfur Oxides (SOx), Particulate Matter (PM) secondary, and lead. The SAB will conduct peer reviews on the PFAS drinking water standard, risk assessment models, climate science reports, economic analyses, EJ reports, and other projects. In addition, SABSO also expects to conduct four to seven regulatory reviews.

In FY 2022, the SABSO completed seating two new standing committees. The first is the Environmental Justice Science Committee (EJSC), which will support the Agency's efforts to decrease the environmental burdens and increase the environmental benefits of overburdened and vulnerable communities through science-based decision making. The EJSC will review work done by the Office of Research and Development (ORD) and Office of Policy. Work in this program directly supports EPA Administrator Michael Regan's message "Our Commitment to Environmental Justice" issued on April 7, 2021,¹⁸³ in addition to supporting implementation of Executive Order (EO) 13985,¹⁸⁴ *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and EO 14008, *Tackling the Climate Crisis at Home and Abroad*.¹⁸⁵ The second new standing committee which SABSO created is the Climate Science Committee (CSC). The CSC will mainly review work by EPA's ORD and Office of Air and Radiation to support the new Strategic Goal 4, *Ensure Clean and Healthy Air for all Communities*. In 2023, the EJSC and CSC expect to complete three climate and EJ risk analyses.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

¹⁸³ For more information, please see: <https://www.epa.gov/newsreleases/epa-administrator-regan-announces-new-initiatives-support-environmental-justice-and>.

¹⁸⁴ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁸⁵ For more information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$193.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$400.0) This program increase is for conducting peer reviews to support priority rulemakings and analyses, including PFAS and several critical pollutants.
- (+\$183.0) This program increase will support with conducting climate and EJ risk analyses.

Statutory Authority:

Environmental Research, Development, and Demonstration Authorization Act (ERDDAA); Federal Advisory Committee Act (FACA); and Clean Air Act (CAA).

Operations and Administration

Acquisition Management

Program Area: Operations and Administration
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$30,623	\$32,247	\$40,017	\$7,770
Leaking Underground Storage Tanks	\$245	\$132	\$132	\$0
Hazardous Substance Superfund	\$23,380	\$23,800	\$32,345	\$8,545
Total Budget Authority	\$54,248	\$56,179	\$72,494	\$16,315
Total Workyears	275.1	285.7	355.7	70.0

Program Project Description:

Environmental Programs and Management (EPM) resources in the Acquisition Management Program support EPA's contract activities, which cover planning, awarding, and administering contracts for the Agency. Efforts include issuing acquisition policy and interpreting acquisition regulations; administering training for contracting and program acquisition personnel; providing advice and oversight to regional procurement offices; and providing information technology (IT) improvements for acquisition.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an investment of 35.0 FTE and approximately \$7.8 million to strengthen EPA's capacity to process new, increased, and existing award contract actions in a timely manner; advance EPA utilization of small and disadvantaged businesses; support "Made in America" initiatives; and support supply chain risk management activities for information and communication technology. This program will continue to assist the Agency in its efforts to process and award contract actions in a timely manner and in accordance with Federal Acquisition Regulation (FAR) and guidance from the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP). Timely and equitable procurement are crucial to EPA's mission.

In FY 2023, EPA will continue to support the implementation of supply chain risk requirements in Section 889 of the 2019 National Defense Authorization Act and the "Made in America Laws" referenced in Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers*,¹⁸⁶ while furthering Category Management implementation requirements. EPA

¹⁸⁶ For additional information, please refer to: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/>.

also will focus on establishing a comprehensive architecture for the Agency's supply chain as well as mechanisms to identify and mitigate risk. EPA also will continue to identify activities and resources to modernize the acquisition process that will allow the Agency to connect with a more diverse business base to address inequities in the acquisition process and, thus, build domestic markets and capabilities.

In FY 2023, EPA will continue working to eliminate barriers to full and equal participation in agency procurement and contracting opportunities for all communities, including underserved communities. The Agency will promote the equitable delivery of government benefits and opportunities by making contracting and procurement opportunities available on an equal basis to all eligible providers of goods and services. This work aims to increase the percentage of EPA contract spend awarded to small businesses located in Historically Underutilized Business Zones (HUBZones). EPA's acquisition equity assessment and related industry listening sessions confirmed that small and disadvantaged businesses face unique challenges in accessing procurement opportunities. These businesses often lack dedicated resources and in-house capacity to master the myriad of complex federal requirements needed to capitalize on Agency acquisition and financial assistance opportunities.

In FY 2023, in support of Administration climate sustainability initiatives, EPA will work with applicable program offices to identify and prioritize procurement plans that spur innovation, commercialization, and deployment of clean energy technologies.

EPA remains committed to leveraging Category Management, Spend Under Management (SUM), Best-In-Class (BIC), and strategic sourcing principles in each of its programs and purchasing areas to save taxpayer dollars and improve mission outcomes. In FY 2023, EPA will continue to leverage data provided by the General Service Administration and implement spend analysis, trend analysis, and data visualization tools to measure progress toward the implementation of Category Management and the adoption of Federal Strategic Sourcing vehicles and BIC acquisition solutions.

OMB's Category Management focuses on total acquisition spend transitioned from contract vehicles that are unaligned with Category Management principles to the SUM Program. In accordance with OMB Memorandum M-22-03, *Advancing Equity in Federal Procurement*,¹⁸⁷ EPA revised its Acquisition Guidance section 8.0.100, *Requirements for Mandatory Use of Common Contract Solutions*, to add clarification of the SUM Tier 2-SB designation which is afforded to contracts of any size awarded to small and disadvantaged businesses. The revision emphasizes EPA's focus on small business utilization and ensures continued alignment with federal category management and equity goals. EPA is currently projecting to reach its FY 2023 OMB-designated SUM spend goal of 52 percent of total addressable spend. The Agency has initiated a Category Management strategy for IT and will award a consolidated/enterprise-wide mission support services contract for the Office of Land and Emergency Management as a SUM Tier 1 solution.

¹⁸⁷ For additional information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf>.

Additionally, EPA is initiating strategic sourcing initiatives in the following areas while directing requirements resulting from the increased Bipartisan Infrastructure Law funding to SUM solutions:

- New Laboratory Equipment Maintenance solution
- Cell services (recompete)
- CyberFEDS resources software
- Office of Air & Radiation EARTH Agency-wide professional services solution
- Subscription solutions

In FY 2023, EPA will continue to implement SUM principles to leverage pre-vetted agency and government-wide contracts as part of the Agency's effort to utilize more mature, market-proven acquisition vehicles. Through SUM Tier 2 and BIC solutions, EPA will leverage acquisition experts to optimize spending within the government-wide category management framework and increase the transactional data available for agency-level analysis of buying behaviors. To modernize the acquisition process and remove barriers to entry for obtaining government contracts, EPA has developed two innovative tools available agencywide: the EPA Solution Finder, which provides solution and ordering information for all EPA enterprise-wide contract solutions; and the BIC Opportunity Tool, which recommends BIC solutions to address newly identified agency requirements for commodities and services and those supported on expiring contracts.

EPA also will continue to maximize its Strategic Sourcing Program (SSP), thereby enhancing purchase coordination, improving price uniformity and knowledge-sharing, and leveraging small business capabilities to meet acquisition goals. The SSP allows the Agency to research, assess, and award contract vehicles that will maximize time and resource savings. The SSP serves as a foundation for effective financial and resource management because it simplifies the acquisition process and reduces costs. Long-term implementation of the SSP is transforming the Agency's acquisition process into a strategically driven function, ensuring maximum value for every acquisition dollar spent. In the first quarter of FY 2022, EPA realized \$9.6 million cost avoidance in specific, measurable costs for: five agencywide software solutions; print services; cellular services; shipping; voice services; office supplies; lab supplies; computers; furniture and furniture management services; and laboratory equipment maintenance. Since the beginning of the Strategic Sourcing Program in FY 2013, EPA has achieved cost avoidance of \$38.1 million.

In FY 2023, EPA will continue to evaluate options for replacing the EPA Acquisition System with an approved government-wide Federal Shared Service Provider for a contract writing system in line with government-wide mandates to increase the use of shared services.¹⁸⁸ The Agency is focusing on a modern acquisition solution that reduces costs while increasing efficiency by standardizing federal procurement planning, contract award, administration, and close-out processes. Transition preparations include data management strategies, business process reviews, and user engagement to develop a business case and ensure data elements conform with Federal Government Procurement standards. As part of this effort, in FY 2023, EPA will utilize a new Government-wide Unique Entity Identifier for acquisition awards in line with General Services Administration and OMB requirements. EPA also will continue implementing the Financial

¹⁸⁸ OMB-19-16 "Centralized Mission Support Capabilities for the Federal Government, for more information, please refer to: <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-16.pdf>.

Information Technology Acquisition Reform Act (FITARA)¹⁸⁹ by competing contracts with multiple vendors or confining the scope of the contract to a limited task, thereby avoiding vendor lock-in, and developing acquisition vehicles that support the Agency in FITARA compliance and implementation.

Performance Measure Targets:

Work under this program supports performance results in the Small Minority Business Assistance Program under the EPM appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,214.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$6,556.0 / +35.0 FTE) This program change will strengthen EPA's capacity to process new, increased, and existing award contract actions in a timely manner; advance EPA utilization of small and disadvantaged business; support "Made in America" initiatives; and support supply chain risk management activities for information and communication technology. This investment includes \$6.0 million in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

¹⁸⁹ For additional information, please refer to: <https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf#page=148%5D>.

Central Planning, Budgeting, and Finance
Program Area: Operations and Administration
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$71,528</i>	<i>\$76,718</i>	<i>\$89,154</i>	<i>\$12,436</i>
Leaking Underground Storage Tanks	\$343	\$416	\$448	\$32
Hazardous Waste Electronic Manifest System Fund	\$154	\$0	\$0	\$0
Hazardous Substance Superfund	\$26,775	\$26,561	\$28,806	\$2,245
Total Budget Authority	\$98,800	\$103,695	\$118,408	\$14,713
Total Workyears	438.8	462.0	470.0	8.0

Total workyears in FY 2023 include 2.0 FTE funded by TSCA fees.

Total workyears in FY 2023 include 39.0 FTE to support Central Planning, Budgeting, and Finance working capital fund (WCF) services.

Program Project Description:

Activities under the Central Planning, Budgeting, and Finance Program support the management of integrated planning, budgeting, financial management, performance and accountability processes, risk assessments and reporting, and financial systems to ensure effective stewardship of resources. This includes managing and supporting the Agency's financial management systems. Functions include financial payment and support services for EPA; general and specialized fiscal and accounting services for many of EPA's programs; strategic planning and accountability for environmental, fiscal, and managerial results; executing an Enterprise Risk Management Program to support effective and efficient mission delivery and decision-making; providing policy, systems, training, reports, and oversight essential for EPA's financial operations; managing the agencywide Working Capital Fund (WCF); and managing the Agency's annual budget process. This program supports agency activities to meet requirements of the Government Performance and Results Modernization Act (GPRMA) of 2010;¹⁹⁰ the Digital Accountability and Transparency (DATA) Act of 2014;¹⁹¹ the Federal Information Technology Acquisition Reform Act (FITARA) of 2015;¹⁹² the Federal Management Financial Integrity Act (FMFIA);¹⁹³ the Inspector General Act of 1978, as Amended;¹⁹⁴ and the Foundations for Evidence-Based Policymaking Act of 2018.¹⁹⁵

¹⁹⁰ For more information, please see: <https://www.congress.gov/111/plaws/publ352/PLAW-111publ352.pdf>.

¹⁹¹ For more information, please see: <https://www.congress.gov/113/plaws/publ101/PLAW-113publ101.pdf>.

¹⁹² FITARA became law as a part of the National Defense Authorization Act for Fiscal Year 2015 (Title VIII, Subtitle D), <https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf>.

¹⁹³ For more information, please see: <https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg814.pdf>.

¹⁹⁴ For more information, please see: <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg1101.pdf>.

¹⁹⁵ For more information, please see: <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an additional \$12.4 million and 7.6 FTE. This increase is to support implementation of the Foundations for Evidence-Based Policymaking Act of 2018 and systems modernization and provide for necessary fixed costs increases. EPA will continue to provide resource stewardship to ensure that all agency programs operate with fiscal responsibility and management integrity, financial services are efficiently and consistently delivered nationwide, and programs demonstrate results. EPA will maintain key planning, budgeting, performance measurement, and financial management activities but also implement enhancements to technical training, outreach, and reporting to assistance recipients and programs with a goal of reducing the barriers to managing what can be complex federal requirements intended to ensure sound financial management. EPA will ensure secure and efficient operations and maintenance of core agency financial management systems: Compass, PeoplePlus (Time and Attendance), Budget Formulation System, which includes a Performance Module, and related financial reporting systems. The Agency continues to modernize its financial systems to gain greater efficiencies through leveraging the accounting system and eliminating legacy systems, as well as provide accessible tools to manage resources and track performance. For example, the Agency is implementing a new integration with its financial system, to better track and account for its bills associated with the e-Manifest Program (a national hazardous waste electronic manifest tracking system for transport activities). This integration will improve the data quality and timeliness for the manifest transactions, in addition to aligning more to federal accounting standards for receivables. Robotics Process Automation (BOTS) will be one part of the overall strategy to reduce manual work and improve efficiency. EPA will focus on ensuring a standardized approach across all financial systems for granting access, managing access and the ability to audit access in a structured manner. This will allow the Agency to address over 50 specific security controls. EPA will continue to expand and enhance easy to use dashboards for financial management. Dashboards are now in place to support payroll and FTE management, and to support GPRMA performance planning and systematic tracking of progress.

In FY 2023, EPA will continue to standardize and streamline internal business processes, reduce the number of administrative systems, and adopt federal shared services when supported by business case analysis. Modernizing or integrating legacy payment systems will continue to be a focus, and funds are requested to support the planning and analysis to start the next effort, as well as the analysis needed for the Agency's Time and Attendance system alternatives. For example, EPA has implemented Treasury's Invoice Processing Platform (IPP) for reviewing invoices and paying commercial vendors. As of February 2022, roughly 95 percent of contract invoices are being handled through this system, resulting in staff efficiencies for processing invoice payment due to increased automation. Beginning in FY 2023, EPA will add additional payment types to this system, including Superfund Contract Lab Program payments through a system interface and miscellaneous obligations, which will utilize the IPP Self-Service module. This implementation will greatly reduce manual effort, improve data quality, and allow for the elimination of two legacy administrative systems.

By the end of FY 2022 and through FY 2023, EPA will focus on the implementation of G-Invoicing, Treasury's Interagency Agreement system. G-Invoicing will integrate into the Agency's accounting system as part of a government-wide effort to standardize and improve financial management of interagency agreements. The goal of G-Invoicing is to align EPA's business processes to deliver a new and more streamlined approach for the end-to-end delivery of financial transactions for Interagency Agreements. This will involve implementing a new version of EPA's accounting systems software in FY 2022. Extensive testing and training will be needed to implement other associated business process changes and system touchpoints. By the end of FY 2022, the Agency will begin brokering and processing all new Interagency Agreements within G-invoicing. In FY 2023, the Agency will work on ensuring that all open Interagency Agreements are migrated into G-invoicing. The Agency's goal is to fully implement G-invoicing for new and existing agreements by the Treasury mandated date of October 1, 2023.

Over the next several years, other federal shared services that will impact financial transactions are likely to be offered. EPA will further standardize processes to prepare for the new shared federal payroll or time and attendance systems. Equally important is the ability to adapt systems to meet increased transparency needs, such as those prescribed in the DATA Act. The DATA Act reporting will continue to evolve with more stringent timelines, certification requirements, data standards and validation checks, as well as additional areas of federal financial spending. The Agency plans to be flexible to adapt to the new transparency needs, to provide timely and accurate spending information to the public.

In FY 2023, resources are requested to support formal evaluations as well as efforts to improve critical data collections and data sharing in priority areas as directed by the Foundations for Evidence-Based Policymaking Act of 2018. In alignment with the Act, EPA has been steadily building the capacity for this important work, and in FY 2022 established the policy framework for the Agency's evaluation program. In FY 2023, the Agency will start implementing the larger goals of the Act and is requesting resources to support the use of high-quality evaluation to ensure programs are effective as designed. In alignment with the Act, EPA will use findings from the FY 2022 capacity assessment to prioritize strategic investments at an enterprise level that will expand capacity for robust evaluation, data use, research and development, analysis, and Lean Management. The Act requires EPA to develop an evidence-building portfolio to support policy and program implementation decisions by generating evaluation studies to help the Agency improve, advance, or modify existing programs, policies, projects, or operations. In FY 2023, EPA will further develop the Agency's learning agenda, build evaluation and evidence-building into the planning for new and enhanced programs, enhance strategic and annual planning, collaborate with external evaluation experts, and produce implementation guidance for EPA's evaluation policy framework. EPA will invest in evaluation and other evidence-building activities addressing environmental justice (EJ), climate change, community engagement, equity, diversity, and inclusion. Also, as part of the Agency's FY 2023 evidence-building portfolio, EPA will lead a cross-government effort to develop evidence-building guidelines and initiate evaluation studies related to the execution of the Infrastructure Investment and Jobs Act of 2021 (IIJA) investments.

In FY 2023, the Program will continue to focus on core responsibilities in the areas of strategic planning; performance measurement, assessment, and reporting; enterprise risk management; budget preparation; financial reporting; and transaction processing. As the Agency lead in

designing and implementing performance measurement and risk management strategies that inform Agency decision-making and advance mission results, the Program will focus on driving progress toward the Administrator's priorities by regularly assessing performance results against ambitious targets, monitoring and mitigating risks, and adjusting strategies as needed. This includes convening Quarterly Performance Reviews (QPRs) to assess progress; promoting an increased use of data analytics and evidence-based decision-making practices; working collaboratively with Agency programs to assess and analyze performance and risk data; and providing technical assistance on agencywide measures of governance to enhance data quality. EPA also will continue to use the performance data and other evidence to answer fundamental business questions and identify opportunities for service improvements.

During FY 2023, EPA will continue to leverage a management system that uses Lean Management techniques and tools to promote continuous improvement. Lean Management techniques will continue to complement EPA's performance framework to help the Agency meet the requirements and spirit of the GPRMA. As of February 2022, EPA has improved nearly 1,100 processes and implemented over 5,000 employee ideas. Improvements and innovations have been made in administrative areas, such as acquisitions, Freedom of Information Act (FOIA) response, and in many programmatic areas. For example, the management system helped EPA reduce its water permit backlog and achieve reductions in areas not attaining air pollution standards by 25 percent. The management system also has helped EPA elevate and solve problems more effectively. For example, thanks to systematic problem-solving, EPA's Office of Enforcement and Compliance Assurance was able to help several EPA regions address challenges related to Internet sales of illegal vehicles and engines not meeting air quality standards.

Moving forward, EPA will continue measuring process improvements as a long-term performance goal in support of the *FY 2022 – 2026 EPA Strategic Plan*. EPA has worked to increase the flexibility of its Continuous Improvement Program to better integrate with the Agency's range of programs and approaches. EPA also expects to continue supporting states and tribes in adopting its Lean Management techniques to improve processes related to authorized or delegated federal programs, and in key priority areas, such as EJ. To date, environmental quality departments in Maryland, Connecticut, New Hampshire, Texas, Oklahoma and most recently the District of Columbia have adopted and deployed the Lean Management techniques in partnership with EPA.

EPA has made significant strides in recent years to bring programs that were considered susceptible to improper payments, to a point where the improper payments are at very low rates. However, the Agency continues to be vigilant in its payment reviews. Annually, EPA conducts Internal Control reviews of multiple programs. In addition, as required by Payment Integrity Information Act of 2019 (PIIA) (P.L. 116-117),¹⁹⁶ and OMB Memorandum M-21-19 Appendix C,¹⁹⁷ EPA is conducting a triennial risk assessment review of all of its payment streams. Other improvements include the recent implementation of upgraded systems used for payments and invoice processing through which the Agency anticipates even fewer payment errors moving forward. To strengthen our processes, EPA is developing risk assessment plans for significant new funding the Agency receives. These risk assessments will outline any differences in authorities or new requirements of the funding, potential areas that will need additional guidance as well as

¹⁹⁶ For more information, please see: <https://www.congress.gov/116/plaws/publ117/PLAW-116publ117.pdf>.

¹⁹⁷ For more information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf>.

tracking and reporting, performance measures and internal controls that will be established to prevent and detect possible improper payment activities.

The Program will continue to conduct internal control program reviews and use the results and recommendations from the Office of Inspector General to provide evidence of the soundness of EPA's financial management program and identify areas for further improvement. The Program will collect key operational statistics for its financial management program to further evaluate its operations and for management decision-making. For example, in FY 2019, EPA observed a trend that Agency corrective actions were increasingly being implemented beyond the agreed upon resolution date. OCFO continues to engage more and more with the community to ensure the close out or extension requests were completed. Additionally, OCFO is adding in validation and documentation measures to ensure that the process is standardized across the Agency while providing more customer-level support. In addition, EPA is dedicated to reducing fraud, waste, and abuse, and strengthening internal controls over improper payments.

The Program will continue to support FITARA requirements in accordance with EPA's Implementation Plan.¹⁹⁸ The Chief Information Officer will continue to be engaged throughout the budget planning process to ensure that information technology needs are properly planned and resourced in accordance with FITARA.

Performance Measure Targets:

(PM CF2) Number of Agency administrative systems and system interfaces.	FY 2022 Target	FY 2023 Target
	17	17
(PM OP1) Number of operational processes improved.	FY 2022 Target	FY 2023 Target
	200	200

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$6,425.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+5,027.0 / +6.0 FTE) This program change reflects an increase to support implementation of the Foundations for Evidence-Based Policymaking Act of 2018 in the regional offices. Funding also will allow headquarters offices to lead a coordinated cross-agency process supporting the design and execution of evaluations of IJA investments. This investment includes \$1.051 million in payroll.
- (+\$984.0 / +1.6 FTE) This program change reflects an increase to allow the Agency to continue its efforts to modernize and streamline its financial systems and processes. This program change also funds the effort to scale up support needed to implement increased

¹⁹⁸ For more information, please see: <http://www.epa.gov/open/fitara-implementation-plan-and-chief-information-officer-assignment-plan>.

workload on grant payments and provide essential workforce support, training and working capital fund needs. This investment includes \$280.0 thousand in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified as Title 5 App.) (EPA's organic statute).

Facilities Infrastructure and Operations
Program Area: Operations and Administration
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$257,524</i>	<i>\$285,441</i>	<i>\$288,293</i>	<i>\$2,852</i>
Science & Technology	\$65,093	\$67,500	\$68,912	\$1,412
Building and Facilities	\$36,071	\$27,076	\$73,894	\$46,818
Leaking Underground Storage Tanks	\$932	\$836	\$724	-\$112
Inland Oil Spill Programs	\$628	\$682	\$641	-\$41
Hazardous Substance Superfund	\$81,976	\$68,727	\$71,219	\$2,492
Total Budget Authority	\$442,223	\$450,262	\$503,683	\$53,421
Total Workyears	334.2	315.4	325.4	10.0

Total work years in FY 2023 include 5.4 FTE to support Facilities Infrastructure and Operations working capital fund (WCF) services.

Program Project Description:

Environmental Programs and Management (EPM) resources in the Facilities Infrastructure and Operations Program fund the Agency's rent, utilities, and security. The Program also supports centralized administrative activities and support services, including health and safety, environmental compliance and management, facilities maintenance and operations, space planning, sustainable facilities and energy conservation planning and support, property management, mail, and transportation services. Funding for such services is allocated among the major appropriations for the Agency.

This program also includes the Agency's Protection Services Detail (PSD) that provides physical protection for the Administrator through security for daily activities and events. The PSD coordinates all personnel and logistical requirements including scheduling, local support, travel arrangements, and the management of special equipment.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an investment of more than \$2.8 million and 9.0 FTE to support agencywide climate sustainability and resiliency initiatives and EPA facilities projects. EPA will continue to invest in the reconfiguration of EPA's workspaces, enabling the Agency to release office space and avoid long-term rent costs, consistent with HR 4465,¹⁹⁹ the *Federal Assets Sale*

¹⁹⁹ For additional information, please refer to: <https://www.congress.gov/bill/114th-congress/house-bill/4465>, *Federal Assets Sale and Transfer Act of 2016*.

and Transfer Act of 2016. EPA is implementing a long-term space consolidation plan that aims to reduce the number of occupied facilities, consolidate and optimize space within remaining facilities, and reduce square footage wherever practical. EPA also will continue working to enhance its federal infrastructure and operations in a manner that increases efficiency. For FY 2023 the Agency is requesting \$155.33 million for rent, \$4.57 million for utilities, and \$27.81 million for security in the EPM appropriation. EPA uses a standard methodology to ensure that rent charging appropriately reflects planned and enacted resources at the appropriation level.

EPA also will work to secure physical and operational resiliency for Agency facilities. As part of this work, EPA will continue conducting climate resiliency assessments at all EPA-owned facilities to identify critical upgrades that are necessary to improve facility resiliency against the impacts of climate change, such as roofing stability or seawall construction projects. In FY 2023, EPA will conduct climate assessments at the following facilities: Cincinnati Test and Evaluation Facility, Duluth Environmental Center, Ada Gaar Corner, Ada Environmental Research Center, Region 10 Laboratory – Manchester. EPA will initiate all high-priority projects within 24 months of the completion of a climate assessment.

Further, EPA will continue reconfiguring EPA's workplaces with the goal of reducing long-term rent costs while increasing EPA facility sustainability to combat the effects of climate change and ensuring a space footprint that accommodates a growing workforce. Space reconfiguration enables EPA to reduce its footprint to create a more efficient, collaborative, and technologically sophisticated workplace. However, even if modifications are kept to a minimum, each move requires initial funding to achieve long-term cost avoidance and sustainability goals. These investments support sustainable federal infrastructure, a clean energy future, and goals to achieve net-zero emissions by 2050.

In FY 2023, EPA will pursue aggressive energy, water, and building infrastructure requirements with emphasis on environmental programs (e.g., Environmental Management Systems, Environmental Compliance Programs, Leadership in Energy and Environmental Design Certification, alternative fuel use, fleet reductions, telematics, sustainability assessments). This investment in infrastructure (e.g., architectural and design) and mechanical systems (e.g., Optimized Building Managements Systems for heating and cooling with load demand driven controls) is necessary to meet the Administration's climate sustainability goals. Additionally, in 2023, EPA will direct \$1.4 million to continue the Agency's transition to electric vehicles through direct purchase (mobile lab vehicles) or lease through the General Services Administration (GSA) for all future fleet procurements where economically feasible. EPA also will identify opportunities to build out necessary charging infrastructure at EPA facility locations. EPA's goal is to use 100 percent carbon pollution-free electricity on a net annual basis by 2030.

EPA also will meet regulatory Occupational Safety and Health Administration (OSHA) obligations and provide health and safety training to field staff (e.g., inspections, monitoring, on-scene coordinators) and track capital equipment of \$25 thousand or more. The Agency will continue its partnership with GSA to utilize shared services solutions, *USAccess* and Enterprise Physical Access Control System (ePACS) programs. *USAccess* provides standardized HSPD-12 approved Personal Identity Verification (PIV) card enrollment and issuance and ePACS provides centralized access control of EPA space, including restricted and secure areas.

Performance Measure Targets:

(PM CRP) Percentage of priority climate resiliency projects for EPA-owned facilities initiated within 24 months of a completed facility climate assessment and project prioritization.	FY 2022 Target	FY 2023 Target
		100
(PM CAA) Number of EPA-owned facility climate adaptation assessments completed.	FY 2022 Target	FY 2023 Target
	2	5

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$863.0) This change to fixed and other costs is a net increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs. This change includes adjustments to rent, utilities, security, and transit subsidy needs.
- (+\$1,989.0 / +9.0 FTE) This program change is an increase to support agencywide climate sustainability and resiliency initiatives and EPA facilities projects that will ensure the Agency has an optimal footprint to support the proposed FTE increase in the FY 2023 Budget request. This investment includes \$1.5 million in payroll.

Statutory Authority:

Federal Property and Administration Services Act; Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98-80, 97 Stat. 485 (codified at Title 5, App.) (EPA's organic statute).

Financial Assistance Grants / IAG Management

Program Area: Operations and Administration
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$27,294</i>	<i>\$25,430</i>	<i>\$33,040</i>	<i>\$7,610</i>
Hazardous Substance Superfund	\$4,224	\$3,210	\$4,403	\$1,193
Total Budget Authority	\$31,518	\$28,640	\$37,443	\$8,803
Total Workyears	137.0	139.5	184.5	45.0

Program Project Description:

Environmental Program and Management (EPM) resources in the Financial Assistance Grants and Interagency Agreement (IA) Management Program support the management of grants and IAs as well as suspension and debarment activities for assistance and procurement programs. Grants and IAs historically comprise approximately 60 percent of EPA's annual appropriations. Resources in this program ensure EPA manages grants and IAs to meet the highest fiduciary standards and achieve measurable results for environmental programs and Agency priorities, and that the government's financial resources and business interests are protected from fraud and mismanagement.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA requests an additional investment of \$7.6 million and 40.0 FTE to provide technical assistance and outreach to first time recipients of federal funding; improve capacity for oversight and tracking of new and increased grant investments; and process financial assistance agreements in a timely manner. EPA will continue to implement grants management activities to achieve efficiencies while enhancing quality and accountability and ensuring that opportunities for competitive grants are made publicly available so that all eligible applicants have an opportunity to compete for them. EPA also will explore methods to use or update the grant competition and grant-making processes to promote racial equity and support for underserved communities. For example, EPA will provide technical assistance to potential grantees from underserved communities on sound financial management practices to reduce barriers to competition for EPA grant resources. EPA also will track grant place of performance to determine whether underserved and environmental justice (EJ) communities are realizing the benefits of EPA grant programs.

EPA will continue investments in modernizing grant and IA information technology/information management (IT/IM) systems, support the improved capacity for oversight and tracking of new

and increased grant investments, and ensure the timely processing of financial assistance agreements. EPA will manage its Next Generation Grants System (NGGS) in conjunction with the retirement of an outdated legacy grants management system. NGGS aligns with the requirements of the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act, applicable Office of Management and Budget (OMB) Quality Service Management Offices (QSMO) standards, and the Federal Integrated Business Framework for grants (e.g., required standard data elements for grants reporting). In FY 2023, EPA will operate and maintain an electronic grants record management system that integrates with EPA's enterprise records management system and aligns with applicable QSMO standards. The Agency also will utilize the government-wide Unique Entity Identifier system for grant awards to meet OMB requirements.

Further, EPA will continue to focus on reducing the administrative burden on EPA and grant applicants and recipients, and on improving grants management procedures. The Agency will continue implementing the FY 2021-2025 Grants Management Plan, focusing on the award and effective management of assistance agreements, enhancing partnerships within the grants management community, promoting environmental justice, and ensuring effective grant oversight and accountability.

By October 1, 2022, EPA will have completed activities to align its IA business processes to ensure compatibility with the government-wide mandate to adopt G-Invoicing, the federal shared service for intragovernmental transactions. EPA provides quarterly progress updates to Treasury that highlight activities under the Agency's approved G-Invoicing Implementation Plan.

In FY 2023, the Agency will continue to make use of discretionary debarments and suspensions as well as statutory disqualifications under the Clean Air Act and Clean Water Act to protect the integrity of federal assistance and procurement programs. Congress and federal courts have long recognized federal agencies' inherent authority and obligation to exclude non-responsible parties from eligibility to receive government contracts and federal assistance awards (e.g., grants, cooperative agreements, loans, and loan guarantees).

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$752.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$6,858.0 / +40.0 FTE) This program change will support technical assistance and outreach to first time recipients of federal funding; improve capacity for oversight and tracking of new and increased grant investments; and the timely processing of financial assistance agreements. This investment includes \$6.833 million in payroll.

Statutory Authority:

Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA’s organic statute); Federal Grant and Cooperative Agreement Act; Federal Acquisition Streamlining Act § 2455.

Human Resources Management

Program Area: Operations and Administration
Cross-Agency Mission and Science Support

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$48,256</i>	<i>\$46,229</i>	<i>\$66,087</i>	<i>\$19,858</i>
Hazardous Substance Superfund	\$7,200	\$6,202	\$8,476	\$2,274
Total Budget Authority	\$55,456	\$52,431	\$74,563	\$22,132
Total Workyears	228.3	229.9	316.4	86.5

Total workyears in FY 2023 include 0.2 FTE to support Human Resources Management working capital fund (WCF) services.

Program Project Description:

Environmental Programs and Management (EPM) resources for the Human Resources (HR) Management Program support human capital management (HCM) activities throughout EPA. To help achieve its mission and maximize employee productivity and job satisfaction, EPA continually works to improve business processes for critical HCM functions including recruitment, hiring, employee development, performance management, leadership development, workforce planning, and labor union engagement. This includes personnel and payroll processing through the Human Resources Line of Business. EPM resources also support overall federal advisory committee management and Chief Human Capital Officer Council activities under applicable statutes and guidance, including the Agency's Human Capital Operating Plan.

FY 2023 Activities and Performance Plan:

Work in this program provides Cross-Agency Mission and Science Support and is allocated across strategic goals and objectives in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the Agency requests an additional investment of \$19.9 million and 73.7 FTE to support the implementation of EPA's Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan, expand EPA's intern program, support EPA's Learning Agenda's evidence-gathering activities, and strengthen agencywide capacity to quickly increase staff levels in key offices and programs. Effective workforce management is critical to EPA's ability to accomplish its mission. EPA's efforts in HR functions are focused on strengthening the workforce, retaining critical expertise, and capturing institutional knowledge. EPA continues developing mechanisms to ensure that employees have the right skills to successfully achieve the Agency's core mission today and in the future.

The Agency is actively involved with OPM's Chief Human Capital Officer Council and the President's Management Council Agenda to address the challenges of the 21st Century federal workforce. In FY 2023, in line with President Biden's *Executive Order on Diversity, Equity,*

Inclusion, and Accessibility in the Federal Workforce,²⁰⁰ EPA will implement the actions identified in the DEIA Strategic Plan to assess whether Agency recruitment, hiring, promotion, retention, professional development, performance evaluations, pay and compensation policies, reasonable accommodations access, and training policies and practices are equitable. EPA will take an evidence-based and data-driven approach to determine whether and to what extent Agency practices result in inequitable employment outcomes, and whether Agency actions may help to overcome systemic societal and organizational barriers. Further, the Agency will assess the status and effects of existing diversity, equity, inclusion, and accessibility initiatives or programs, and review the institutional resources available to support human resources activities. For areas where evidence is lacking, the Agency will propose opportunities to advance diversity, equity, inclusion, and accessibility, addressing those gaps. EPA will continue to involve employees at all levels of the organization in the assessment of DEIA initiatives and programs.

In FY 2023, EPA will support the following DEIA initiatives:

- EPA will plan a Senior Executive Service Candidate Development Program, projected to start in early FY 2024. The Program will focus on diversity, equity, inclusion, and accessibility so future executives reflect the diversity of the American people and are effectively trained in the skills necessary to lead a diverse workforce that operates in a hybrid work environment.
- EPA will develop and implement a centralized paid internship program, which expands on existing internship opportunities across the Agency to strengthen talent and workforce acquisition. This paid internship program will focus on expanding federal work experience opportunities for underrepresented and underserved populations, which may experience barriers to applying or fully participating in existing opportunities. EPA will provide approximately 180 four-month internship opportunities in every EPA Headquarters and Regional Office. Additionally, EPA will establish a plan to convert eligible interns to permanent federal service based on performance and completing program requirements.

EPA has increased efforts to improve Diversity and Inclusion with virtual outreach events, targeting diverse networks such as veterans, Historically Black Colleges and Universities, and Returned Peace Corps Volunteers. To recruit EPA's next generation of employees, EPA will continue outreach to new potential sources for future employees and use all available hiring authorities, including Schedule A, and recruitment incentives. In FY 2023, EPA will continue to work with Science, Technology, Engineering and Mathematics-focused institutions and organizations, like the Society of Hispanic Professional Engineers, and will participate in the President Management Council's Interagency Rotational Program to create leadership development assignments for GS 13-15 level employees. EPA reviews applicant flow data analysis on diversity every quarter to assess progress and identify areas for improvement.

In FY 2023, EPA will continue to implement flexible work policies in line with OMB Memoranda M-21-25 - *Integrating Planning for A Safe Increased Return of Federal Employees and Contractors to Physical Workplaces with Post-Reentry Personnel Policies and Work*

²⁰⁰ For additional information, please refer to: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/>.

Environment,²⁰¹ including designation of remote work status to certain positions, providing work schedule flexibilities, and increasing the use of telework. EPA strives to be a model federal employer and these efforts will strengthen the Agency's ability to attract, recruit, retain, and empower top talent while advancing diversity, equity, inclusion, and accessibility.

EPA will identify the most critical need for climate literacy training for its workforce. These efforts will focus on integrating climate adaptation, risk disclosure, and other education activities into the management of EPA's procurement, real property, public lands and waters, and financial programs.

EPA also will continue supporting evidence-building activities to implement a workforce strategy guided by data-driven decisions as part of its implementation of the Evidence Act through the Workforce Planning learning priority area in EPA's Learning Agenda. This work includes determining Mission Critical Competencies, enhancement of EPA's competency assessment tool, skills gap analysis across the Agency, and knowledge transfer strategies to support succession planning.

In FY 2023, EPA will continue to operate and maintain the Talent Enterprise Diagnostic (TED) tool to allow EPA to make data-driven, strategic workforce decisions. TED data will serve a crucial role in EPA's Workforce Planning and Succession Management activities by identifying potential competency gaps across the Agency and by increasing management's understanding of where needed skill sets should reside within EPA. Additionally, EPA will continue to maintain and operate dashboards related to Mission Critical Occupations, Workforce Demographics, and Diversity. These dashboards provide data visualizations and easy-to-understand information about the current workforce, assisting EPA with succession planning by identifying workforce gaps due to anticipated retirements and attrition trends, which is critical considering that approximately 25 percent of EPA's workforce is retirement eligible, and another 19 percent of the current workforce will become retirement eligible over the next five years.

The Agency will continue to implement Executive Order 14003, *Protecting the Federal Workforce*,²⁰² issued on January 22, 2021. EPA reviewed its unions' agreements to identify and eliminate provisions influenced by four revoked executive orders and will increase the focus on pre-decisional involvement and interest-based bargaining. In FY 2023, EPA will continue working to reset and repair relationships and involve unions in a collaborative way, promoting the Agency's and the unions' shared goal of the positive and equitable treatment of newly empowered employees.

Finally, EPA's advisory committees, operating as catalysts for public participation in policy development, implementation, and decision making, have proven effective in building consensus among the Agency's diverse external partners and stakeholders. In line with President Biden's *Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based*

²⁰¹ For additional information, please see: <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-25.pdf>.

²⁰² For additional information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/22/executive-order-protecting-the-federal-workforce/>.

Policymaking,²⁰³ EPA remains committed to ensuring that highly qualified external experts serve on Agency committees and that those members and future nominees of EPA advisory committees reflect the diversity of America in terms of gender, race, ethnicity, geography, and other characteristics.

Performance Measure Targets:

(PM DEIA) Diversity, Equity, Inclusivity, and Accessibility (DEIA) Maturity Level achieved.	FY 2022 Target	FY 2023 Target
		L1

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$3,693.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE in this program project due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs. This change also includes other Agency fixed costs such as sign language support for deaf and hard of hearing employees, workers compensation, and childcare tuition assistance programs.
- (+\$4,200.0 / +45.0 FTE) This program change is an increase to develop and implement a centralized paid internship program to strengthen talent and workforce acquisition. This paid internship program will focus on expanding federal work experience opportunities for underrepresented and underserved populations. This investment includes \$3.6 million in payroll.
- (+\$3,214.0 / +5.0 FTE) This program change is an increase to support the implementation Executive Order 14035 - Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce and taking the actions identified in EPA's DEIA Strategic Plan. This investment includes \$859.0 thousand in payroll.
- (+\$1,000.0) This program change is an increase to support the establishment of a Senior Executive Service Candidate Development Program with a goal that EPA senior leaders reflect the diversity of the American people and will include a special focus on developing diversity, equity, accessibility, and inclusivity competencies.
- (+\$1,571.0 / +5.2 FTE) This program change is an increase in support of the Foundations for Evidence-Based Policymaking Act of 2018. Resources will be used for Learning Agenda's evidence-gathering activities. This investment includes \$893.0 thousand in payroll.

²⁰³ For additional information, please see: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>.

- (+\$6,180.0 / +18.5 FTE) This program change strengthens agencywide capacity to quickly increase staff levels in key offices and programs (i.e., environmental justice, climate, infrastructure programs, etc.). This investment includes \$3.177 million in payroll.

Statutory Authority:

Title 5 of the U.S.C.; Reorganization Plan No. 3 of 1970, 84 Stat. 2086, as amended by Pub. L. 98–80, 97 Stat. 485 (codified at Title 5, App.) (EPA’s organic statute).

Pesticides Licensing

Science Policy and Biotechnology

Program Area: Pesticides Licensing

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$1,287</i>	<i>\$1,546</i>	<i>\$1,580</i>	<i>\$34</i>
Total Budget Authority	\$1,287	\$1,546	\$1,580	\$34
Total Workyears	4.1	4.6	4.6	0.0

Program Project Description:

The Science Policy and Biotechnology Program provides scientific and policy expertise, coordinates EPA's intra/interagency efforts, and facilitates information-sharing related to core science policy issues concerning pesticides and toxic chemicals. Many offices within EPA regularly address cutting-edge scientific issues. Coordination among affected EPA programs including but not limited to air, pesticides, toxic substances, water, and research and development allows for coherent and consistent scientific policy from a broad Agency perspective. In addition, the Science Policy and Biotechnology Program provides for independent, external scientific peer review, primarily through two federal advisory committees: the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA SAP), and the Science Advisory Committee on Chemicals (SACC).

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

In FY 2023, the Science Policy and Biotechnology Program continues its peer review role to evaluate the scientific and technical issues associated with chemical safety and biotechnology. In addition, other science policy and biotechnology issues will be supported by the Program when decisions require expert scientific advice from an independent scientific peer review panel.

FIFRA Scientific Advisory Panel

The FIFRA SAP, operating under the rules and regulations of the Federal Advisory Committee Act, will continue to serve as the primary external independent scientific peer review mechanism for EPA's pesticide programs. As the Nation's primary pesticide regulatory agency, EPA makes decisions that require EPA to review scientific data on pesticide risks to wildlife, farm workers, pesticide applicators, sensitive populations, and the general public. The scientific data involved in these decisions are complex, and a critical component of EPA's use of the best available science to address such issues is seeking technical advice and scientific peer review from the FIFRA SAP.

The FIFRA SAP conducts reviews each year on a variety of scientific topics. Specific topics to be placed on the SAP agenda are usually confirmed in advance of each session and include difficult, new, or controversial scientific issues identified in the course of EPA's pesticide program activities. In FY 2021, EPA addressed expired membership terms on the FIFRA SAP. EPA appointed two new members and reappointed the recent Chair and one recent member. In FY 2022, EPA initiated the selection process for those members whose terms expire in FY 2023. EPA does not plan to conduct any FIFRA SAP meetings in FY2022. Based on the committee's objectives and scope of activities, the FIFRA SAP anticipates holding approximately 5 meetings in FY 2023. These meetings will focus on the impact of pesticides on health and the environment and include the peer review of scientific data, methodologies, models, and assessments, as needed.

Science Advisory Committee on Chemicals

The SACC, operating under the rules and regulations of the Federal Advisory Committee Act, will continue to serve as the primary external independent scientific peer review mechanism for EPA's chemical safety programs. EPA makes decisions that require the Agency to review scientific data on risks that chemicals pose to a variety of populations including women, children, and other potentially exposed or susceptible subpopulations. The scientific data, assessments, methodologies, and measures involved in these decisions are complex. Many of EPA's tools and models for examining exposures to industrial chemicals rely on inputs that are sensitive to climate data. The SACC provides independent, expert scientific advice and recommendations to EPA on the scientific basis for risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under the Toxic Substances Control Act (TSCA) and also is a critical component of EPA's use of the best available science.

The SACC conducts reviews each year on a variety of scientific topics. Similar to the FIFRA SAP, specific topics to be placed on the SACC agenda include difficult, new, or controversial scientific issues identified in the course of EPA's chemicals program activities. In FY 2021, EPA addressed expired membership terms on the SACC. EPA appointed nine new members and reappointed seven recent members. In FY 2022, EPA plans to initiate the selection process for those members whose terms expire in FY 2023. By the end of the second quarter of FY 2022, EPA has held one SACC meeting and plans to hold a second SACC meeting in the third quarter of FY 2022. Based on the committee's objectives and scope of activities, the SACC anticipates holding approximately 4 to 6 meetings in FY 2023. These meetings will focus on the impact of industrial chemicals on human health and the environment and include the peer review of scientific data, methodologies, models, and assessments, as needed.

Planned Committee Meetings

Based on the estimates reflected in the 2020-2022 committee charters,²⁰⁴ the FIFRA SAP and SACC anticipate holding a total of nine to 11 meetings in FY 2023. These meetings will focus on the impact of pesticides and chemicals on human health and the environment and include the peer review of scientific data, methodologies, models, and assessments, as needed.

²⁰⁴ For additional information, please visit: <https://www.epa.gov/sap/fifra-scientific-advisory-panel-charter> and <https://www.epa.gov/tsca-peer-review/science-advisory-committee-chemicals-charter>.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$140.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (-\$106.0) This change is the result of savings realized by the program's introduction and increased use of virtual meetings.

Statutory Authority:

Federal Insecticide Fungicide and Rodenticide Act (FIFRA); Federal Food, Drug and Cosmetics Act (FFDCA), §408; Toxic Substances Control Act (TSCA); Federal Advisory Committee Act (FACA).

Pesticides: Protect Human Health from Pesticide Risk

Program Area: Pesticides Licensing

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$58,124</i>	<i>\$60,181</i>	<i>\$62,726</i>	<i>\$2,545</i>
Science & Technology	\$2,431	\$2,803	\$2,917	\$114
Total Budget Authority	\$60,555	\$62,984	\$65,643	\$2,659
Total Workyears	434.3	385.6	385.6	0.0

Total program work years in FY 2023 include 82.1 FTE funded by the Reregistration and Expedited Processing Revolving Fund.

Program Project Description:

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)²⁰⁵ and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) and the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4),²⁰⁶ EPA is charged with protecting people from the health risks that pesticide use can pose. FIFRA requires EPA to register pesticide products before they are marketed for use in the U.S. Registration is based on the review of scientific data sufficient to demonstrate that the product can perform its intended function without unreasonable adverse effects on people or the environment. This program emphasizes the use of reduced risk methods of pest control, including the use of reduced risk pesticides and helping growers and other pesticide users learn about new, safer products and methods of using pesticides.

Under FFDCA, if a pesticide is to be used in a manner that may result in pesticide residues in food or animal feed, EPA must establish a tolerance, or maximum legal residue level, or an exemption from the requirement of a tolerance, before it can be registered. To establish a tolerance, EPA must find that the residues are “safe,” which, under FFDCA, means that there is a reasonable certainty of no harm to human health from aggregate exposure to the pesticide residue in food and from all other exposure except occupational exposure.²⁰⁷ EPA must periodically review the registration and tolerances that the Agency issues to ensure that public health is adequately protected.

²⁰⁵ For additional information on FIFRA, please visit: <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act>.

²⁰⁶ On Friday, March 8, 2019, Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) was signed into law, which reauthorizes PRIA for 5 years through fiscal year 2023, and updates the fee collection provisions of the Federal Insecticide, Fungicide, and Rodenticide Act.

²⁰⁷ Additional information related to pesticide registration, the setting of tolerance levels, and the pesticide risk assessment process can be found at the following location: <https://www.epa.gov/pesticide-tolerances/setting-tolerances-pesticide-residues-foods>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

Pesticide Review and Registration

In FY 2023, EPA will continue to review and register new pesticides, new uses for existing pesticides, and other registration requests in accordance with statutory requirements, making sure exposure to infants and children is reflected in the human health risk assessments supporting these regulatory determinations. Many assessments also address potential exposure to pregnant women. In addition, the Agency will evaluate pesticides that are already in the market against current scientific standards for human health. To advance EPA's work supporting environmental justice (EJ) and children's health, EPA also will evaluate these registration requests with special consideration for impacts on members of overburdened communities and sensitive life stages, especially infants and children. Under the FQPA, EPA is statutorily required to ensure that its regulatory decisions are protective of children's health and other vulnerable subpopulations. EPA also will continue to emphasize the registration of reduced risk pesticides, including biopesticides, to provide farmers and other pesticide users with new, safer alternatives. The Agency, in collaboration with the U.S. Department of Agriculture (USDA), also will work to ensure that minor use registrations receive appropriate support and that needs are met for reduced risk pesticides for minor use crops. EPA also will assist farmers and other pesticide users in learning about new, safer products and methods of using existing products through workshops, demonstrations, small grants, and materials on the website and in print.

In FY 2023, EPA also will continue to review the registrations of existing pesticides with a focus on assessing and ensuring that pesticides are used safely, without unreasonable adverse effects to human health and the environment. The goal of the registration review process, as mandated by statute, is to review pesticide registrations every 15 years to determine whether they continue to meet the FIFRA standard for registration.²⁰⁸ For pesticides registered before October 1, 2007, EPA is required to make registration review decisions by October 1, 2022. EPA has completed opening dockets for all 726 cases in registration review. EPA will focus its FY 2023 resources on completing decisions for cases that are not completed by the FY 2022 statutory deadline and on cases with 15-year due dates in FY 2023 and beyond. Through FY 2021, EPA has completed a total of 676 draft risk assessments and 556 final or interim decisions, with 50 draft risk assessments and 170 final or interim decisions remaining to be completed to meet the FY 2022 statutory deadline.

EPA fell short of the FY 2021 target of 110 decisions completed through pesticides registration review. As EPA approaches the October 1, 2022 deadline, many of the remaining cases involve highly complex scientific and regulatory issues, which have resulted in requests from stakeholders to extend the comment periods for proposed decisions, lengthening the amount of time needed to complete the necessary reviews. In addition, EPA continues to await data and/or registrant input critical to finalizing several registration review decisions. Further ongoing challenges in meeting the FY 2022 deadline included delayed registrant submittal of additional data, the need for inter- and intra-agency coordination, and resource constraints.

²⁰⁸ For additional information please visit the EPA Pesticide Registration Internet site: <https://www.epa.gov/pesticide-registration>.

In FY 2023, EPA will continue enhancements to the Pesticide Registration Information System (PRISM). Expanding the capabilities of PRISM by integrating more of EPA's regulatory workflow into a single system will reduce paperwork burden and maximize efficiency, in accordance with the President's Management Agenda (PMA), by converting paper-based processes into electronic processes and corresponding workflows for the Pesticide Program's regulated entities. In addition, PRISM will create an iterative/inclusive, streamlined electronic workflow to support pesticide product registration, chemical reviews, and assessments, and will be used as a centralized data repository to electronically store associated data as they relate to regulatory decisions and scientific information. Overall, the Agency projects that expanding PRISM and related projects will improve over 150 existing business process workflows supporting the implementation of PRIA. This digital transformation will consolidate over 30 different custom-built systems into a single platform to track registration or re-registration of a chemical from the moment EPA receives a case to the final regulatory decision. Being able to track all reviews in a single system will eliminate the need for hundreds of spreadsheets or Access databases that are currently used to track work at a team, branch, divisional or office level. This transformation focuses on improving the employee's experience only and not on the customer experience which will be the focus beyond FY 2023.

Reducing Pesticide Risks to People through the Registration of Lower Risk Pesticides

In FY 2023, EPA will continue to promote reduced-risk pesticides by giving registration priority to pesticides that have lower toxicity to humans and non-target organisms such as birds, fish, and plants; low potential for contaminating groundwater; lower use rates; low pest resistance potential; and compatibility with Integrated Pest Management (IPM).²⁰⁹ Several other countries and international organizations also have instituted programs to facilitate registering reduced-risk pesticides. EPA works with the international scientific community and the Organization for Economic Cooperation and Development (OECD) member countries to register new reduced-risk pesticides and to establish related tolerances (maximum residue limits). Through these efforts, EPA will help reduce risks to Americans from foods imported from other countries.

Protecting Workers from On-the-Job Pesticide Risks

Millions of America's workers are exposed to pesticides in occupations such as agriculture, lawn care, food preparation, and landscape maintenance. A very large proportion of these workers are members of communities with EJ concerns. EPA's work in this area will be guided by Executive Order (EO) 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and, where regulatory action is taken, by the Agency's *Guidance on Considering Environmental Justice During the Development of an Action*²¹⁰ and its companion *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*.²¹¹ Protecting pesticide applicators, handlers and agricultural workers from potential effects of pesticides is an important role of the Pesticide Program. Pesticide handlers in a number of sectors may be exposed to pesticides when they prepare pesticides for use, such as by mixing a concentrate with water or loading and applying the pesticide. In FY 2023, EPA will continue to support the implementation

²⁰⁹For more information, please see: <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>. Please also see EPA's IPM website: <https://www.epa.gov/safepestcontrol/integrated-pest-management-ipm-principles#for-more-information>.

²¹⁰ For more information, please see: <https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action>.

²¹¹ For more information, please see: <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

of the Agricultural Worker Protection Standard (WPS)²¹² and the Certification of Pesticide Applicators (CPA)²¹³ regulations through education and outreach, guidance development, and grant programs. Efforts to implement the WPS include addressing EJ issues in rural communities, especially by considering farmworkers and their families. Programs include National Farmworker Pesticide Safety Training and development of pesticide educational resources and training targeted toward agricultural workers and pesticide handlers. Efforts include addressing the education needs of the target audience to ensure trainings are effective and in the appropriate cultural context. EPA also will continue outreach and training to healthcare providers in the recognition and management of pesticide-related illnesses. Outreach will focus on training health care providers serving the migrant and seasonal farmworker community, further improving the treatment of agricultural workers and rural communities potentially exposed to pesticides. Support also will include efforts to improve reporting of occupation-related pesticide incidents. In addition, EPA will continue to support the development of resources, training, and educational forums for applicators, including the development of a virtual pesticide training for certification of private applicators in Indian Country covered under the EPA-administered plan to meet the requirements of using restricted use pesticides in agriculture.

Implementation of the CPA also includes continued support of state Pesticide Safety Education Programs, which play a crucial role in training and certifying pesticide handlers in proper pesticide use, thereby enabling the handlers to protect themselves and other workers, as well as the public and the environment. In FY 2023, EPA will focus on implementation of amended state, tribal, and federal certification programs based on the 2017 CPA rule. EPA will support that effort by providing technical assistance for updates to state/tribal applicator training materials including manuals, exams, and other recertification materials to meet the revised Part 171 rule requirements.

Preventing Disease through Public Health Pesticides: Antimicrobial Testing

In reviewing registrations for antimicrobials, EPA is required to ensure that antimicrobials maintain their effectiveness.²¹⁴ EPA's Antimicrobial Testing Program (ATP) has been testing hospital sterilants, disinfectants, and tuberculocides since 1991 to help ensure that products in the marketplace meet stringent efficacy standards. EPA is currently in the process of developing a new risk-based testing strategy in response to EPA Office of the Inspector General (OIG) recommendations made in FY 2016.²¹⁵ Consistent with the OIG recommendations, EPA suspended the ATP in November 2017 and released a draft risk-based strategy, renamed the Antimicrobial Performance Evaluation Program (APEP), in October 2019 for public comment and will continue to seek public input prior to implementation in FY 2023.

COVID Response

In FY 2023, EPA will continue to review registration requests for new surface and air disinfectants for SARS-CoV-2 as necessary via the standard registration process and associated deadlines required by FIFRA. EPA also will continue to update List N, which is a list of registered disinfectants for use against SARS-CoV-2.

²¹² For more information, please see: <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

²¹³ For additional information, please visit: <https://www.epa.gov/pesticide-worker-safety/revised-certification-standards-pesticide-applicators>.

²¹⁴ Please see FIFRA section 3(h)(3), 7 U.S.C. 136a(h)(3).

²¹⁵ For additional information, please visit: <https://www.epa.gov/pesticide-registration/antimicrobial-testing-program>.

General Pesticide Outreach and Education

In FY 2023, the Pesticide Program will continue environmental education and training efforts for growers, pesticide applicators, and workers, as well as the public in general. Giving priority to reduced risk and Integrated Pest Management (IPM) friendly pesticides are two steps toward protecting human health. Also, the Pesticide Safety Education Program provides education through training and is a key component to the implementation of applicator certification programs across the nation, including on tribal lands and along the US-Mexico border, and helps ensure pesticides are used in a manner to protect human health and the environment. In addition, EPA will continue to make information easily accessible to the public and pesticide users, update safety information on pesticides, support the National Pesticide Information Center²¹⁶ that provides a bilingual hotline for pesticide information and develop outreach materials for the public and incident reporting.

Tribal Pesticide Program Council (TPPC)

The Pesticide Program also will continue to manage the Tribal Pesticide Program Council (TPPC) cooperative agreement. This national partnership group was formed in 1999 as a forum for tribes and Alaska Native Villages to work with EPA to address pesticide issues and concerns. The TPPC also provides a forum for tribes and Alaska Native Villages to provide input in developing policies that would strengthen their pesticide programs, provide guidance for tribes that do not have such programs, and provide networking opportunities and support for tribal pesticide regulators. In FY 2023, EPA will work with the TPPC to identify concerns related to EJ and climate change that EPA can begin to address.

Reducing Animal Testing

In FY 2023, the Agency will continue to use its guiding principles on data needs²¹⁷ to ensure that it has sufficient information to support strong regulatory decisions to protect human health, while reducing and, in some cases, eliminating unnecessary animal testing. EPA's Hazard and Science Policy Council (HASPOC) plays an important role in the implementation of the vision of the 2007 National Academy of Sciences (NAS) report on toxicity testing in the 21st Century—which recommended moving toward smarter testing strategies by waiving human health toxicity studies that do not provide useful information. Since its inception, HASPOC has waived hundreds of studies resulting in the saving of tens of thousands of animals and tens of millions of dollars without compromising the integrity of the science supporting EPA's regulatory decision-making for pesticides. In addition, the Agency will continue to develop and implement 21st Century toxicology and exposure methods, including additional retrospective analysis of the reproductive avian study, development of a waiver framework for carcinogenicity studies, and the use of computer-modeling and in vitro testing techniques for acute oral toxicity, skin and eye irritation, and inhalation toxicity. All of these activities advance more efficient and effective human health risk assessments that support sound, risk-based, regulatory decision-making.

In FY 2023, the Agency will be measuring performance for the second cycle of registration review, tracking intermediate stages such as docket openings, draft risk assessment completion, and final registration review case completions under the 15-year cycle of pesticide registration review. Additionally, EPA will be tracking metrics related to pesticide safety training of farmworkers

²¹⁶ For additional information, please visit: <http://npic.orst.edu/>.

²¹⁷ Additional information on reducing animal testing may be found at: <https://www.epa.gov/pesticides/new-epa-guidance-testing-pesticides-will-reduce-animal-testing>.

funded through a 5-year cooperative grant; metric details will be provided by the grantee and will capture the number of farmworkers trained and knowledge comprehension based on pre- and post-training assessment.

Performance Measure Targets:

Work under this program supports performance results in the Pesticides: Protect the Environment from Pesticide Risk Program under the EPM appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$2,409.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$136.0) This program change is a rebalancing of resources among the Pesticides programs to increase outreach to overburdened and underserved communities with EJ concerns.

Statutory Authority:

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Federal Food, Drug, and Cosmetic Act (FFDCA) § 408.

Pesticides: Protect the Environment from Pesticide Risk

Program Area: Pesticides Licensing

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$36,714	\$39,543	\$45,876	\$6,333
Science & Technology	\$1,805	\$2,207	\$2,252	\$45
Total Budget Authority	\$38,519	\$41,750	\$48,128	\$6,378
Total Workyears	322.1	249.6	259.6	10.0

Total program work years in FY 2023 include 53.2 FTE funded by the Reregistration and Expedited Processing Revolving Fund.

Program Project Description:

The goal of this program, authorized under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), is to protect the environment from the potential risks posed by pesticide use. To achieve this goal, EPA must conduct risk assessments before the initial registration of each pesticide for each use, as well as re-evaluate each pesticide at least every 15 years, as required by the Food Quality Protection Act (FQPA). This periodic review is accomplished through EPA's Pesticide Registration Review Program.²¹⁸ In addition to FIFRA responsibilities, the Agency has distinct obligations under the Endangered Species Act (ESA),²¹⁹ which include ensuring that pesticide regulatory decisions will not destroy or adversely modify designated critical habitat or jeopardize the continued existence of species listed as threatened or endangered by the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (jointly, "the Services").

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

Assessing the Risks Pesticides Pose to the Environment

To accomplish the goals set out in the FIFRA, in FY 2023, EPA will continue to conduct ecological risk assessments²²⁰ to determine what risks are posed by each pesticide to plants, animals, and ecosystems that are not the targets of the pesticide and whether changes are necessary to protect these resources.²²¹ In FY 2023, EPA will continue to examine all toxicity and environmental fate data submitted with each new pesticide registration application to determine what risks the new

²¹⁸ FIFRA requires EPA to register a pesticide if, among other things, the product "will also not generally cause unreasonable adverse effects on the environment" when used in accordance with labeling and common practices.

²¹⁹ For additional information, please visit: <https://www.epa.gov/endangered-species>.

²²⁰ For additional information, please visit: <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/factsheet-ecological-risk-assessment-pesticides>.

²²¹ Additional information may be found at: <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>.

active ingredient may pose to the environment. When complex scientific issues arise, the Agency may solicit external review, such as consultation with the FIFRA Scientific Advisory Panel,²²² for independent scientific advice.

Ensuring Proper Pesticide Use through Labeling

In FY 2023, EPA will continue to use pesticide labels to indicate what uses are appropriate and to ensure that the pesticide is used at the application rates and according to the methods and timing approved.²²³

Pesticide Registration Review

In FY 2023, EPA's activities will involve increased efforts on comprehensive risk assessments to protect the environment. For pesticides registered before October 1, 2007, EPA is required to make registration review decisions by October 1, 2022. EPA has completed opening dockets for all 726 cases in registration review. EPA will focus its FY 2023 resources on completing decisions for cases that are not completed by the FY 2022 statutory deadline and on cases with 15-year due dates in FY 2023 and beyond. Through FY 2021, EPA has completed a total of 676 draft risk assessments and 556 final or interim decisions, with 50 draft risk assessments and 170 final or interim decisions remaining to be completed to meet the FY 2022 statutory deadline.

EPA fell short of the FY 2021 target of 110 decisions completed through pesticides registration review. As EPA approaches the October 1, 2022, deadline, many of the remaining cases involve highly complex scientific and regulatory issues, which has resulted in requests from stakeholders to extend the comment periods for proposed decisions, lengthening the amount of time needed to complete the necessary reviews. In addition, EPA continues to await data and/or registrant input critical to finalizing several registration review decisions. Further ongoing challenges in meeting the FY 2022 deadline include delayed registrant submittal of additional data, and the need for inter- and intra-agency coordination, and resource constraints.

Pesticide Registration and Risk Reduction Through the Use of Safer Pesticides and Methods

EPA has promoted reduced risk pesticides since 1993 by giving registration priority to pesticides that have lower toxicity to people and non-target organisms such as birds, fish, and plants; low potential for contaminating groundwater; lower use rates; low pest resistance potential; and compatibility with Integrated Pest Management (IPM).^{224,225} In FY 2023, EPA will continue to assist pesticide users in learning about new, safer products as well as safer methods for using existing products. Through its Center for IPM, educational webinars, science-based publications, informational social media outreach, and collaborations with federal partners, states, commodity

²²² For additional information, please visit: <https://www.epa.gov/sap>.

²²³ Under FIFRA, it is illegal to use a registered pesticide in a manner inconsistent with the label instructions and precautions.

²²⁴ Attaining risk reduction would be significantly hampered without availability of alternative products to these pesticides for consumers. Consequently, the Registration Program's work in ensuring the availability of reduced risk pesticides plays a significant role in meeting the environmental outcome of improved ecosystem protection. For additional information on pesticide risk, please visit: <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>.

²²⁵ For additional information on IPM, please visit: <https://www.epa.gov/safepestcontrol/integrated-pest-management-ipm-principles>.

and other non-governmental organizations, the Agency also will encourage the use of IPM tools, biological pesticides and biotechnology, where they present lower-risk solutions to pest problems.

Reducing Animal Testing

In FY 2023, EPA will continue its efforts to promote the use of alternative methods to whole animal toxicity testing for characterizing the effects of pesticide active ingredients on terrestrial and aquatic vertebrates. EPA also will continue its partnership with the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). A focus area will be the use of Collaborative Acute Toxicity Modeling Suite (CATMoS) estimates of acute oral toxicity to replace mammal testing in ecological risk assessment. EPA also will complete a study of the feasibility of reducing the number of tested species of fish used to characterize acute effects for the taxa. This effort is expected to complement EPA's work with other federal agencies to collect, describe, and develop performance-based evaluations for a suite of *in-silico* and *in-vitro* methods for estimating acute lethal endpoints in fish. By addressing both the endpoint needs and the available estimation tools concurrently, EPA expects to increase the efficiency of performance evaluation and narrow the scope of needed estimation methods for consideration, thereby expediting the acceptance process. Additionally, through stakeholder discussions and participation in intergovernmental working groups, the Agency will work to identify opportunities to reduce the use of animals in ecological hazard testing. EPA also will reach out to non-governmental organizations to collaborate on projects (*e.g.*, to retrospectively analyze the results of ecological hazard testing). Based on the results of those projects, EPA will then develop and disseminate guidance materials for companies to clarify ecotoxicology testing requirements/needs.

Minimizing Environmental Impacts through Outreach and Education

Through public outreach, the Agency will continue to encourage the use of IPM and other practices to maximize the benefits pesticides can yield while minimizing their impacts on the environment. As a continued requirement of the Office of Chemical Safety and Pollution Prevention's National Program Guidance, regional pesticide offices will initiate specific IPM-related projects that target disadvantaged, overburdened or underserved communities, or vulnerable populations, such as children attending preschools and tribal schools. The Agency also will develop and disseminate pesticide safety brochures, videos, links, and webinars which provide education on potential benefits of IPM, and promote outreach through its Center for IPM on the success of IPM to encourage its use.²²⁶ To encourage responsible pesticide use that does not endanger the environment, EPA also will reach out to the public through its website and social media accounts, and to workers and professional pesticide applicators through worker training programs. The Pesticide Safety Education Program²²⁷ provides education to professional pesticide applicators through training and is a key component to the implementation of applicator certification programs across the nation and helps ensure pesticides are used in a manner to protect human health and the environment.

Protection of Endangered Species

EPA is responsible for complying with the Endangered Species Act (ESA) and for ensuring that federally endangered and threatened species are not harmed from exposure when it registers

²²⁶ For additional information, please visit: <https://www.epa.gov/safepestcontrol/integrated-pest-management-ipm-principles>.

²²⁷ For additional information, please visit: <https://www.epa.gov/pesticide-worker-safety/pesticide-safety-education-programs-0>.

pesticides. This presents a great challenge given that there are approximately 1,200 active ingredients in more than 17,000 pesticide products—many of which have multiple uses. Endangered species risk assessments are extraordinarily complex, national in scope, and involve comprehensive evaluations that consider risks to over 1,600 listed endangered species and 800 designated critical habitats in the U.S. with diverse biological attributes, habitat requirements, and geographic ranges. Given the complexity of evaluating potential effects to diverse listed species, EPA has been unable to perform ESA evaluations for the vast majority of its actions, which has resulted in numerous successful litigation challenges for registration and registration review actions.

In January 2022, EPA announced a new policy whereby all new active ingredient registrations will only be registered under conditions that comply with ESA.²²⁸ To support this action and incrementally integrate ESA mandates into the pesticide registration process, EPA requests an additional \$4.9 million and 10 FTE for the Pesticide Program in FY 2023. These resources will support the Program in its efforts to begin making progress towards conducting risk assessments and making risk management decisions which protect federally threatened and endangered species from exposure to new active ingredients, in accordance with ESA mandates.

In FY 2023, the Agency also will assess whether listed endangered or threatened species or their designated critical habitat may be affected by use of pesticide products in a manner described in reports to Congress.²²⁹ Where risks are identified in a biological evaluation, EPA also will work with the Services in a consultation²³⁰ process to ensure these new or existing pesticide registrations also meet the ESA standard.²³¹ EPA also will continue to develop processes to protect listed species earlier in the regulatory and consultation processes as resources allow.

During registration review, EPA also will support obtaining risk mitigation earlier in the process by encouraging registrants to agree to changes in uses and applications of a pesticide that help protect endangered species prior to completion of EPA's consultations with the Services. In FY 2023, pesticide registration reviews are expected to contain environmental assessments. Selected assessments also will evaluate potential endangered species impacts. These efforts will continue to expand the Program's workload due to the need to conduct additional environmental assessments and identify, evaluate, and implement potential mitigations for listed species.

In FY 2023, in cooperation with the Services and the U.S. Department of Agriculture (USDA), the Agency will continue to implement its duties under the ESA. EPA also will continue to work with the Services and USDA to improve the Biological Evaluation methodology to inform the consultation process and will apply appropriate methods to selected pesticide risk assessments. The Agency will continue to provide technical support for compliance with the requirements of the ESA. In FY 2023, EPA also will continue the advancement and integration of state-of-the-art

²²⁸ For additional information, please visit: <https://www.epa.gov/newsreleases/epa-announces-endangered-species-act-protection-policy-new-pesticides>.

²²⁹ For additional information, please visit: <https://www.epa.gov/endangered-species/reports-congress-improving-consultation-process-under-endangered-species-act>.

²³⁰ For additional information, please visit: <https://www.epa.gov/endangered-species/assessing-pesticides-under-endangered-species-act>.

²³¹ Additional information on how EPA protects endangered species from pesticides can be found at: <https://www.epa.gov/endangered-species>.

science models, knowledge bases, and analytic processes to increase productivity and better address the challenge of potential risks of specific pesticides to specific species. Interconnection of the various databases within the Program also will provide improved support to the risk assessment process during registration review by allowing risk assessors to analyze complex scenarios more easily regarding endangered species. EPA also will continue to improve its system used to implement spatially explicit protections for listed species, *Bulletins Live! Two* (BLT).²³² EPA plans to continue to solicit and receive feedback on the usability of BLT, maintain and improve the underlying data, and enhance the usability of the system based on feedback as more bulletins continue to be created and released as part of registration and registration review decisions.

Pollinator Protection

Bees and other pollinators play a critical role in ensuring the production of food. USDA is leading the federal government's effort to understand the causes of declining pollinator health and identify actions that will improve pollinator health. EPA is part of this effort and is focusing on the potential role of pesticides while ensuring that the pesticides used represent acceptable risks to pollinators and that products are available for commercial beekeepers to manage pests that impact pollinator health.

EPA continues to carefully evaluate potential effects that pesticides may have on bees through the registration of new active ingredients and registration review, in cooperation with the Government of Canada and the California Department of Pesticide Regulation. EPA is continuing to work with USDA to identify and address factors associated with declines in pollinator health. EPA also has been working with a wide range of stakeholders in the government and private sectors, both domestically and internationally, to develop and implement strategies to address factors associated with pollinator declines and to ensure that the best available science serves as a foundation for regulatory decisions. In FY 2023, EPA also will continue to apply the best available science and risk management methods to reduce potential exposures to pollinators from pesticides.²³³

Protection of Water Resources

Reduced concentration of pesticides in water sources is an indication of the effectiveness of EPA's risk assessment, management, mitigation, and communication activities. In FY 2023, the Agency also will continue to evaluate monitoring data as it prepares aquatic exposure assessments and will continue to apply risk management measures, when appropriate, to reduce pesticide loadings in water. EPA also will update aquatic benchmarks so that states and other stakeholders can determine if measured pesticide levels might impact aquatic life. Water quality is a critical endpoint for measuring exposure and risk to the environment and a key factor in assessing EPA's ability to reduce exposure from these key pesticides of concern.²³⁴

Performance Measurement

In FY 2023, the Agency will be measuring performance for the registration review cases with 15-year due dates in FY 2023 and beyond, tracking intermediate stages such as docket openings, draft

²³² For additional information, please visit: <https://www.epa.gov/endangered-species/bulletins-live-two-blt-tutorial>.

²³³ Additional actions EPA is taking to protect pollinators from pesticides can be found at: <https://www.epa.gov/pollinator-protection>.

²³⁴ The most sensitive aquatic benchmarks for the chemicals are posted on the website: <http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/aquatic-life-benchmarks-pesticide-registration>.

risk assessment completion, and final registration review case completions under the 15-year cycle of pesticide registration review. The Agency expects to improve protections to endangered species by increasing the percentage of new active ingredient registrations and registration review risk assessments that incorporate considerations of threatened and endangered species and leverage those improvements for other related processes in subsequent years (*e.g.*, new uses). Additionally, EPA will be tracking metrics related to pesticide safety training of farmworkers funded through a 5-year cooperative grant; metric details will be provided by the grantee and will capture the number of farmworkers trained and knowledge comprehension based on pre- and post-training assessment.

Performance Measure Targets:

(PM FIFRA3a) Number of pesticide registration review cases completed with statutory due dates that fall after October 1, 2022.	FY 2022 Target	FY 2023 Target
	15	20
(PM FIFRA3b) Number of pesticide registration review dockets opened for registration review cases with statutory completion dates that fall after October 1, 2022.	FY 2022 Target	FY 2023 Target
	25	27
(PM FIFRA3c) Number of draft risk assessments completed for pesticide registration review cases with statutory completion dates that fall after October 1, 2022.	FY 2022 Target	FY 2023 Target
	9	21
(PM ESA1) Percentage of risk assessments supporting pesticide registration decisions for new active ingredients that consider the effects determinations or protections for federally threatened and endangered species.	FY 2022 Target	FY 2023 Target
	40	50
(PM ESA2) Percentage of risk assessments supporting pesticide registration review decisions that include effects determinations or protections of federally threatened and endangered species.	FY 2022 Target	FY 2023 Target
	20	30
(PM WPS1a) Number of farmworkers receiving EPA-supported WPS pesticide safety training.	FY 2022 Target	FY 2023 Target
	20,000	20,000
(PM WPS1b) Percentage of content knowledge learned by farmworker/trainees upon completion of EPA-supported WPS pesticide training.	FY 2022 Target	FY 2023 Target
	95	95

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,662.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$4,928.0 / +10.0 FTE) This program change will enable the Pesticide programs to begin to fully comply with the Endangered Species Act. Resources will support the program to incrementally address ESA mandates in pesticide risk assessments and making risk management decisions that protect federally threatened and endangered species from exposure to new active ingredients. This investment also includes \$1.818 million in payroll.

- (-\$257.0) This program change is a rebalancing of resources among the Pesticides programs to increase outreach to communities with EJ concerns under the Pesticides: Protection of Human Health Program.

Statutory Authority:

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Endangered Species Act (ESA).

Pesticides: Realize the Value of Pesticide Availability

Program Area: Pesticides Licensing

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$6,034</i>	<i>\$7,730</i>	<i>\$7,979</i>	<i>\$249</i>
Science & Technology	\$645	\$876	\$984	\$108
Total Budget Authority	\$6,680	\$8,606	\$8,963	\$357
Total Workyears	35.3	35.8	35.8	0.0

Program Project Description:

This program seeks to realize the value of pesticides that can be used safely to yield many benefits, such as killing viruses and bacteria in America's hospitals. These benefits also include guarding the Nation's abundant food supply, protecting the public from disease-carrying pests, and protecting the environment from the introduction of invasive species from other parts of the world. In fulfilling its mission, the Program manages the following types of pesticide registrations and regulatory actions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA):²³⁵

- Special Local Needs under FIFRA Section 24(c);
- Federal registrations at the national level under FIFRA Section 3;
- Experimental Use Permit Section 5;
- Emergency, Quarantine, and Crisis Exemption Section 18; and
- Periodic review of existing chemicals under the Registration Review Program.²³⁶

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

Meeting Agriculture's Need for Safe, Effective Pest Control Products

With the passage of the Food Quality Protection Act (FQPA), Congress acknowledged the importance of and need for "reduced-risk pesticides" and supported expedited agency review to

²³⁵ The primary federal law that governs how EPA oversees pesticide manufacture, distribution, and use in the United States is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Originally enacted in 1947, FIFRA has been significantly amended several times, including by the Food Quality Protection Act of 1996 (FQPA) and the Pesticide Registration Improvement Extension Act of 2018 (PRIA). FIFRA requires that EPA register pesticides based on a finding that they will not cause unreasonable adverse effects to people and the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

²³⁶ Additional information may be found here: <https://www.epa.gov/pesticide-registration/types-registrations-under-fifra>.

help these pesticides reach the market sooner and replace other pesticides of higher risk.²³⁷ In FY 2023, EPA will continue to support and develop procedures and guidelines for expedited review of applications for registration or amendments for reduced risk pesticides.

Registration of Generic Pesticides

FIFRA authorizes EPA to register products that are identical to or substantially similar to already registered products (also known as “me too products”). Applicants for these products may rely on, or cite data already submitted by another registrant. The entry of these new products into the market can cause price reductions resulting from new competition and broader access to products, benefitting farmers and consumers. The Agency will continue to prioritize and review generic registrations consistent with the statutory decision-making schedule. Application submissions for these actions can generally be reviewed in four months. The Agency completed 1,256 “me too” new products and amendments in FY 2021. The Agency expects to complete a similar volume of registrations in FY 2023.

Outreach and Education

The Pesticide Program is invested in outreach and training efforts for people who use pesticides and the public in general. In FY 2023, the Agency will continue to encourage Integrated Pest Management (IPM), which emphasizes minimizing the use of broad-spectrum chemicals and maximizing the use of sanitation, biological controls, and selective methods of application. Providing on-the-ground assistance to our partners EPA’s regional offices work with states, tribes, and territories to implement their pesticide programs and carry out IPM projects that inform pesticide users about the pest control options, which pesticides to use, how to use them, and how to maintain the site so pests do not return. In addition, the Pesticide Program and its Center for IPM will provide outreach through webinars on a range of pest management and pollinator protection topics, many of which are of importance in areas with environmental justice (EJ) concerns and tribal communities.

Review and Registration

During FY 2023, EPA will continue to review and register new pesticides and new uses for existing pesticides, and act on other registration requests in accordance with FIFRA and Federal Food, Drug, and Cosmetic Act standards, as well as Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) timeframes. Many of these actions will be for reduced-risk conventional pesticides and biopesticides, which, once registered and used by consumers, will increase societal benefits, including for infants and children as well as susceptible subpopulations. Working together with the affected communities, through IPM and related activities, the Agency plans to accelerate the adoption of lower-risk products. EPA also will continue to support implementation of other IPM-related activities and partner in the development of tools and informational brochures to promote IPM efforts and provide guidance to schools, farmers, other partners, and stakeholders, ensuring that information and communications are accessible by members of communities with EJ concerns.

²³⁷ The law defines a reduced risk pesticide as one that “may reasonably be expected to accomplish one or more of the following: (1) reduces pesticide risks to human health; (2) reduces pesticide risks to non-target organisms; (3) reduces the potential for contamination of valued, environmental resources, or (4) broadens adoption of Integrated Pest Management (IPM) or makes it more effective.”

The Agency's work harmonizing pesticide tolerance levels with our top trade partners will reduce international trade barriers. For FY 2023, EPA will undertake regulatory decisions on an estimated seven new chemicals with food uses. For each of these evaluations, EPA will consider whether there are existing Maximum Residue Levels (MRLs) set by trade partners and whether the science supports harmonizing with those levels in which tolerance harmonization will be a component of a portion of these decisions. Also, during FY 2023, EPA will continue rule-making efforts to improve its crop group system which provides the regulatory definitions for crops which are in inter-state and international commerce. EPA is currently pursuing Phase VI of its proposed revisions to pesticide tolerance crop group regulations.

Emergency, Quarantine, and Crisis Exemptions

In FY 2023, EPA will continue to prioritize emergency exemptions under FIFRA Section 18, which authorizes EPA to allow an unregistered use of a pesticide for a limited time in the event of an emergency, such as a severe pest infestation, public health emergency, or invasive pest species quarantine. The economic benefit of the Section 18 Program to growers is the avoidance of losses incurred in the absence of pesticides exempted under FIFRA's emergency exemption provisions. In addition, exemptions serve as important public health controls to avert pests that may cause significant risk to human health. In FY 2021, the Agency received 76 requests for emergency uses and expects to receive a similar number of requests in FY 2023.

Performance Measurement

In FY 2023, the Agency will be measuring performance for the registration review cases with 15-year due dates in FY 2023 and beyond, tracking intermediate stages such as docket openings, draft risk assessment completion, and final registration review case completions under the 15-year cycle of pesticide registration review. The Agency expects to improve protections to endangered species by increasing the percentage of new active ingredient registrations and registration review risk assessments that incorporate considerations of threatened and endangered species and leverage those improvements for other related processes in subsequent years (*e.g.*, new uses). Additionally, EPA will be tracking metrics related to pesticide safety training of farmworkers funded through a 5-year cooperative grant; metric details will be provided by the grantee and will capture the number of farmworkers trained and knowledge comprehension based on pre- and post-training assessment.

Performance Measure Targets:

Work under this program supports performance results in the Pesticides: Protect the Environment from Pesticide Risk Program under the EPM appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$301.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (-\$52.0) This program change is a rebalancing of resources among the Pesticides programs to increase outreach to overburdened and underserved communities with EJ concerns under the Pesticides: Protection of Human Health Program.

Statutory Authority:

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Federal Food, Drug, and Cosmetic Act (FFDCA) § 408.

Resource Conservation and Recovery Act (RCRA)

RCRA: Corrective Action

Program Area: Resource Conservation and Recovery Act (RCRA)

Goal: Safeguard and Revitalize Communities

Objective(s): Clean Up and Restore Land for Productive Uses and Healthy Communities

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$33,921</i>	<i>\$38,453</i>	<i>\$39,820</i>	<i>\$1,367</i>
Total Budget Authority	\$33,921	\$38,453	\$39,820	\$1,367
Total Workyears	168.9	174.4	174.4	0.0

Program Project Description:

To reduce risks from exposure to hazardous wastes, EPA's Resource Conservation and Recovery Act (RCRA) Corrective Action Program ensures that contaminated facilities subject to RCRA requirements are cleaned up by the responsible party, returns contaminated property to productive use, and keeps costs from being transferred to the taxpayer-funded portion of the Superfund Program. Pursuant to EPA promulgated regulations and administrative orders under RCRA, EPA and authorized states will continue to oversee cleanups conducted by facility owner/operators to ensure that the facilities meet their cleanup obligations and to protect taxpayers from having to pay the bill. Approximately 113 million Americans live within three miles of a RCRA corrective action facility (roughly 35 percent of the U.S. population),²³⁸ and the total area covered by these corrective action sites is approximately 18 million acres.²³⁹

EPA works in close partnership with 44 states and one territory authorized to implement the Corrective Action Program²⁴⁰ to ensure that cleanups are protective of human health and the environment. The Corrective Action Program allows for the return of properties to beneficial use, which benefits the surrounding communities, reduces liabilities for facilities, and allows facilities to redirect resources to productive activities. The Agency provides program direction, leadership, and support to its state partners. This includes specialized technical and program expertise, policy development for effective program management, national program priority setting, measurement and tracking, training and technical tools, and data collection/management/documentation. In addition, through work-sharing, the Agency serves as lead or support for a significant number of complex and challenging cleanups in both non-authorized and authorized states.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.1, Clean Up and Restore Land for Productive Uses and Healthy Communities in the *FY 2022 - 2026 EPA Strategic Plan*.

²³⁸ U.S. EPA, Office of Land and Emergency Management 2021. Data collected includes: (1) RCRA CA site information as of the end of FY2020; and (2) population data from the 2015-2019 American Community Survey.

²³⁹ Compiled RCRAInfo data.

²⁴⁰ State implementation of the Corrective Action Program is funded through the STAG Categorical Grant: Hazardous Waste Financial Assistance and matching state contributions.

In FY 2023, the Corrective Action Program will focus its resources on continuing cleanup of approximately 3,924 priority contaminated facilities (the Corrective Action Progress Track), which include highly contaminated and technically challenging sites, and on assessing others to determine whether cleanups are necessary. As of the end of FY 2021, only 40 percent of these facilities have completed final and permanent cleanups, leaving approximately 2,300 facilities still needing oversight and technical support to reach final site-wide cleanup objectives. In FY 2021, EPA approved 146 RCRA corrective action facilities as ready for anticipated use (RAU), bringing the total number of RCRA RAU facilities to 1,789. In addition, in FY 2021 the Program achieved remedy construction at 57 facilities, resulting in a total of 2,836 with remedies constructed, and achieved performance standards attained at 64 facilities, resulting in a total of 1,583 facilities with standards attained.²⁴¹ The Program's goals are to control human exposures, control migration of contaminated groundwater, complete final cleanups for the Corrective Action Progress Track facilities, and identify, assess, and clean up additional priority facilities.

In FY 2023, EPA will:

- Continue to make RCRA corrective action sites RAU, ensuring that where possible properties are returned to productive use and human health and the environment are protected into the future.
- Assess its universe of cleanup facilities, priorities, and measures to ensure that resources are focused on addressing those facilities that present risk to human health and the environment by implementing actions to end or reduce these threats.
- Provide technical assistance to authorized states in the areas of site characterization, sampling, remedy selection, reaching final cleanup goals, and long-term stewardship for cleanups with contamination remaining in place in order to support communities at risk from multiple health stressors and/or climate change impacts.
- Prioritize and focus the Program on completing site investigations to identify the most significant threats, establish interim remedies to reduce or eliminate exposure, and select and construct safe, effective long-term remedies that also maintain the economic viability of the operating facility.
- For high priority facilities, perform cleanup work under work-sharing agreements to assist with facilities that have complex issues²⁴² or special tasks.
- Continue to improve cleanup approaches and share best practices and cleanup innovations²⁴³ to speed up and improve cleanups.

²⁴¹ For more information, please refer to: <https://www.epa.gov/hw/lists-facilities-resource-conservation-and-recovery-act-rcra-2020-corrective-action-baseline>.

²⁴² For example, vapor intrusion, wetlands contamination, or extensive groundwater issues.

²⁴³ For more information, please refer to: <https://www.epa.gov/hw/toolbox-corrective-action-resource-conservation-and-recovery-act-facilities-investigation-remedy>.

- Continue analysis on potential modifications to regulations to clarify the definition of hazardous waste found in RCRA section 1004(5) as it relates to corrective action for releases from solid waste management units.
- Update and maintain RCRAInfo, which is the primary data system that many states rely upon to manage their RCRA permitting, corrective action, and hazardous waste generator programs. RCRAInfo receives data from hazardous waste handlers for the National Biennial RCRA Hazardous Waste Report. The last biennial report in 2019 showed there were 26,284 generators of over 33 million tons of hazardous waste. RCRAInfo provides the only national-level RCRA hazardous waste data and statistics to track the environmental progress of approximately 20,000 hazardous waste units at 6,600 facilities.
- Contribute to efforts ensuring the proper management, disposal, and cleanup of per- and polyfluoroalkyl substances (PFAS).

Performance Measure Targets:

(PM RSRAU) Number of RCRA corrective action facilities made ready for anticipated use.	FY 2022 Target	FY 2023 Target
	114	100
(PM CA5RC) Number of RCRA corrective action facilities with final remedies constructed.	FY 2022 Target	FY 2023 Target
	55	55

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$1,339.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$28.0) This program change supports RCRA Corrective Action activities including cleanups.

Statutory Authority:

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) §§ 3004, 3005, 8001.

RCRA: Waste Management

Program Area: Resource Conservation and Recovery Act (RCRA)

Goal: Safeguard and Revitalize Communities

Objective(s): Reduce Waste and Prevent Environmental Contamination

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$59,769</i>	<i>\$70,465</i>	<i>\$79,743</i>	<i>\$9,278</i>
Hazardous Waste Electronic Manifest System Fund	\$21,498	\$0	\$0	\$0
Total Budget Authority	\$81,267	\$70,465	\$79,743	\$9,278
Total Workyears	286.5	296.8	324.8	28.0

Total workyears in FY 2023 include 11.0 FTE funded by e-Manifest fees.

Program Project Description:

The Resource Conservation and Recovery Act (RCRA) established EPA's role as a federal leader in the conservation and recovery of resources. Under RCRA, EPA sets national standards for managing solid and hazardous wastes and provides federal agencies, state, tribal, and local governments, and industries with technical assistance on solid waste management, resource recovery, and resource conservation. Approximately 60,000 facilities generate and safely manage hazardous waste in the United States.²⁴⁴ Eighty percent of the U.S. population live within three miles of one of these facilities, making national standards and procedures for managing hazardous wastes a necessity.²⁴⁵

The Waste Management Program safeguards the American people while facilitating commerce by supporting an effective waste management infrastructure. Cradle-to-grave hazardous waste management regulations help ensure safe management practices through the entire process of generation, transportation, recycling, treatment, storage, and final disposal. The Program increases the capacity for proper hazardous waste management in states by providing grant funding and technical support.

The RCRA permitting program serves to protect the millions of people in surrounding communities by facilitating clean closure where applicable and managing permits and other controls to protect human health and the environment for the approximately 6,700 hazardous waste units (e.g., incinerators, landfills, and tanks) located at 1,300 treatment, storage, and disposal permit facilities.²⁴⁶ Just as businesses innovate and grow, the waste management challenges they face also evolve; this requires new direction and changes in the federal hazardous waste program through updated regulations, guidance, and other tools.

²⁴⁴ Memorandum, February 18, 2014, from Industrial Economics to EPA, Re: Analysis to Support Assessment of Economic Impacts and Benefits under RCRA Programs: Key Scoping Assessment, Initial Findings and Summary of Available Data (Section 1), pages 5-11.

²⁴⁵ U.S. EPA, Office of Solid Waste and Emergency Response Estimate. 2014. Data collected includes: (1) site information as of the end of FY 2011 from RCRAInfo; and (2) census data from the 2007-2011 American Community Survey.

²⁴⁶ As compiled by RCRAInfo.

EPA directly implements the RCRA Program in Iowa and Alaska and provides leadership, work-sharing, and support to the remaining states and territories authorized to implement the permitting program. Additionally, the Toxic Substances Control Act (TSCA) polychlorinated biphenyls (PCB) cleanup and disposal program is implemented under the Waste Management Program to reduce PCB exposure from improper disposal, storage, and spills. The Program reviews and approves PCB cleanup, storage, and disposal activities. This federal authority is not delegated to state programs. PCBs were banned in 1979, but legacy use and contamination still exists, and PCBs can still be released into the environment from poorly maintained hazardous waste sites that contain them.

Maintaining updated permits and controls ensures that facilities: 1) have consistent and protective standards to prevent release; 2) have proper standards for waste management to protect human health, prevent land contamination/degradation; and 3) avoid future cleanups and associated substantial costs. EPA will work with authorized states to ensure that permit decisions, including decisions to issue, renew, or deny permits, reflect the latest technology and standards. EPA also will work with authorized states to ensure that all communities, including those who are marginalized and overburdened, have an equitable opportunity to engage in the permitting process. In FY 2020, EPA and the states implemented the Generator Improvement Rule which updated and modernized the regulations for hazardous waste generators to bring them into the 21st Century.

There continues to be increased public and congressional attention to issues around post-consumer materials management, including plastics, in the environment and EPA's role in addressing them (e.g., ocean plastics, environmental justice concerns in countries to whom the U.S. exports plastics, and the climate impacts of single-use plastics). Marine litter is an increasingly prominent global issue that can negatively affect domestic water quality, tourism, industry, and public health. Some of this marine debris comes from human activity at sea, and it makes its way into our waterways from land, creating a direct link between waste management practices and ocean pollution.²⁴⁷ The Save Our Seas 2.0 Act,²⁴⁸ enacted in December 2020, demonstrates bipartisan congressional interest and provides EPA with authority to further act on post-consumer materials management.

The Program also plays a central role in establishing and updating standards for analytical test methods that are used across the country and the world to provide consistent, reliable determinations as to whether waste is hazardous, as well as the presence and extent of hazardous waste in the environment. This work provides the foundation that underlies waste management approaches and ensures that method standards evolve with technology for conducting these analyses.

In addition to overseeing the management of hazardous waste under RCRA Subtitle C, EPA also plays a role in solid waste management under Subtitle D. While much of this area is delegated to the states, EPA is actively working on aspects of coal combustion residuals (CCR) under this area of the law, including the establishment and refinement of appropriate regulations and, as directed by the 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act), developing a new federal permitting program for CCR surface impoundments and landfills. In implementing

²⁴⁷ U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, "Ten Things you should Know about Marine Debris," <https://oceanservice.noaa.gov/news/marinedebris/ten-things.html>.

²⁴⁸ For additional information, please refer to: <https://www.congress.gov/116/plaws/publ224/PLAW-116publ224.pdf>.

regulations for CCR, EPA is taking action to ensure that the concerns of nearby communities are addressed in a protective manner.

While the majority of the work is focused on domestic issues, the Program also is responsible for issues related to international movement of wastes. EPA oversees the tracking and management of hazardous waste imports and exports. Most of these movements are for recycling and, thus, are critical to resource conservation. In coordination with other agencies and departments, EPA represents the U.S. Government in numerous international forums concerned with waste issues. This representation is vital to protecting U.S. interests and furthering U.S. policy goals.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.2, Reduce Waste and Prevent Environmental Contamination in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the RCRA Waste Management Program will:

- Provide technical assistance, guidance, tools, and support to regions, states, and tribes regarding the development and implementation of solid waste programs (*e.g.*, the RCRA hazardous waste generator, transporter, treatment, storage, and disposal regulations and implementing guidance; the RCRA non-hazardous waste program; the TSCA PCB disposal and cleanup program; and the hazardous waste import/export program).
- Provide technical and implementation assistance, oversight, and support to facilities that generate, treat, store, recycle, and dispose of hazardous waste.
- Review and approve PCB cleanup, storage, and disposal activities to reduce exposures, particularly in sensitive areas like schools and other public spaces. Issuing PCB approvals is a federal responsibility, non-delegable to states.
- Manage and monitor the RCRA permitting program and ensure the issuance of permit efficiently to achieve program goals. This includes progress towards meeting the Agency's goal of increasing the percentage of permits kept up to date for the approximately 6,700 hazardous waste units (*e.g.*, incinerators, landfills, and tanks) located at 1,300 treatment, storage, and disposal permit facilities.
- Continue analysis of existing regulations to ensure protective standards for managing solid and hazardous waste and PCBs. In FY 2023, this includes assessment of standards related to open burning/open detonation of hazardous waste, PCB cleanup and disposal, and other regulatory amendments to reflect current standards, policies, and practices.
- Manage the hazardous waste import/export notice and consent process in order to make shipping hazardous waste across borders more efficient. Managing hazardous waste imports and exports is a federal responsibility, non-delegable to states.

- Provide technical hazardous waste management assistance to tribes to encourage sustainable practices and reduce exposure to toxins from hazardous waste.
- Directly implement the RCRA Program in unauthorized states, on tribal lands, and other unauthorized portions of state RCRA programs. Issue and update permits, including continuing to improve permitting processes.
- Establish and update standards for analytical test methods that are used across the country and the world to provide consistent, reliable determinations as to whether waste is hazardous, as well as the presence and extent of hazardous waste in the environment.
- Take action as necessary regarding regulations to ensure protective management of CCR. The Agency has promulgated regulations specifying improved management and disposal practices to ensure people and ecosystems are protected. The Agency will continue to work with our stakeholders as we develop and implement regulations, through technical assistance and guidance.
- Implement applicable provisions of the WIIN Act, which enables states to submit state CCR permit programs for EPA approval. The Agency will continue to work closely with state partners to review and make determinations on state programs. Subject to appropriations, EPA will implement a permit program for CCR disposal facilities on tribal lands as well as participating states.
- EPA requests approximately \$7.1 million and 28 FTE to support EPA's CCR permit program. Activities include authorizing and working with authorized states that wish to stand up their own permit program and supporting the regulated community as they work to comply with the requirements of the CCR Program. Additional resources also will support the establishment, effective development, and launch of the federal permitting program. Without this investment, state permit programs may be put in place at a rate of 1-2 per year, needed rulemaking will extend into the future, and facilities will proceed along closure and corrective action paths that may be non-compliant and not protective of human health and the environment.
- As part of an EPA effort to reduce ocean pollution and plastics, the Program will provide technical expertise and funding to support development and implementation of solid waste management systems and infrastructure to help ensure that non-hazardous waste items are appropriately collected, recycled, reused, or properly disposed of to prevent litter from entering waterways from land.

Performance Measure Targets:

(PM HW5) Number of updated permits issued at hazardous waste facilities.	FY 2022 Target	FY 2023 Target
	90	100

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$2,195.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$7,083.0 / +28.0 FTE) This program change is an increase to support the new CCR permit program, including working to authorize or with authorized state CCR programs as well as the establishment, effective development, and launch of the federal permitting program. This investment includes \$5.05 million in payroll.

Statutory Authority:

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) §§ 3002, 3004, 3005, 3017; Toxic Substances Control Act (TSCA) § 6. Save our Seas 2.0, 2020, Pub. L. 116-224.

RCRA: Waste Minimization & Recycling

Program Area: Resource Conservation and Recovery Act (RCRA)

Goal: Safeguard and Revitalize Communities

Objective(s): Reduce Waste and Prevent Environmental Contamination

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$8,404	\$9,982	\$10,444	\$462
Total Budget Authority	\$8,404	\$9,982	\$10,444	\$462
Total Workyears	44.2	43.4	43.4	0.0

Program Project Description:

The RCRA Waste Minimization and Recycling Program supports the sustainable management of resources, including managing materials that sustainably promote economic growth, reduce environmental impacts, and advance a circular economy for all.

The U.S. recycling industry provides approximately 680,000 jobs and \$5.5 billion annually in tax revenues and there is opportunity for greater contribution to the economy and environmental protection, as recent data indicate materials worth as much as \$9 billion are thrown away each year.²⁴⁹ Recycling is an important part of a circular economy, which refers to a system of activities that is restorative to the environment, enables resources to maintain their highest values, and designs out waste. A circular economy approach provides direct, measurable reductions in greenhouse gas emissions, as natural resource extraction and processing make up approximately 50 percent of total global greenhouse gas (GHG) emissions.²⁵⁰

Further, living near waste and waste-related facilities can place burdens on communities when waste is not properly managed, which can lead to higher levels of chronic health issues. Communities whose residents are predominantly persons of color, Indigenous, or low-income continue to be disproportionately impacted by high pollution levels, resulting in adverse health and environmental impacts. It is critical to implement materials management strategies that are inclusive of communities with environmental justice concerns as well as pursue innovations that offer the benefits of cleaner processing of materials to all. Recycling is not enough to achieve a circular economy, but it is an important part of addressing climate change, creating jobs, and reducing environmental and social impacts.

As directed by Congress, EPA developed a draft National Recycling Strategy in 2020 to begin to address the challenges facing the recycling system to accelerate the move towards a circular economy both domestically and internationally. The Agency established a National Recycling

²⁴⁹ For more information, please refer to: <https://www.epa.gov/smm/recycling-economic-information-rei-report>.

²⁵⁰ U.N. Environment International Resource Panel, Global Resources Outlook, 2019, p. 8.
<https://www.resourcepanel.org/reports/global-resources-outlook>.

Goal to increase the recycling rate from a rate of 32.1 percent in 2018 to 50 percent by 2030,²⁵¹ and finalized and released the National Recycling Strategy on November 15, 2021.²⁵² The National Recycling Strategy is part one of a series of strategies the Agency will be developing to build a stronger, more resilient, and cost-effective recycling system and a circular economy for all. Reducing waste helps alleviate burdens on populations that bear the brunt of poorly run waste management facilities and transfer stations. When applied to critical minerals, a circular economy approach facilitates end-of-life recycling and the recovery of critical minerals in order to support a secure supply chain. Future strategies will focus on plastics, critical minerals and electronics, food waste/organics, textiles, and the built environment (e.g., construction and demolition debris).

Congressional and public interest continues to grow regarding plastics in the environment and EPA's role in addressing them (e.g., ocean plastics, environmental justice concerns in countries to whom the U.S. exports plastics, and the climate impacts of single-use plastics). The Save Our Seas 2.0 Act,²⁵³ enacted in December 2020, demonstrates bipartisan congressional interest and provided EPA with authority to further act on domestic recycling and address plastic waste through new grant programs, studies, and increased federal coordination. Additionally, IIJA provides funding for grants under section 302(a) of the Save Our Seas 2.0 Act as well as education and outreach grants focused on improving material recycling, recovery, and management. The IIJA also establishes new programs focused on battery recycling and directs EPA to develop a model recycling program toolkit, increase coordination and review of federal procurement guidelines, and provide assistance to the educational community to incorporate recycling best practices into curriculum.

The RCRA Waste Minimization and Recycling Program also promotes the efficient management of food as a resource. Reducing food loss and waste means more food for communities, fewer greenhouse gas emissions and climate impacts, and increased economic growth. EPA works to meet the national goal of reducing food loss and waste by 50 percent by 2030, by providing national estimates of food waste generation and management; convening, educating, and supporting communities seeking to reduce food waste; working collaboratively with the U.S. Department of Agriculture and U.S. Food and Drug Administration to reduce food waste; and providing funding to demonstrate anaerobic digester applications.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.2, Reduce Waste and Prevent Environmental Contamination in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will focus on efforts to strengthen the U.S. recycling system by investing in solid waste management infrastructure and consumer education and outreach, address the global issue

²⁵¹ In 2018, in the United States, approximately 292 million tons of municipal solid waste (MSW) were generated. Of the MSW generated, approximately 94 million tons were recycled or composted, equivalent to a 32.1 percent recycling and composting rate. https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf.

²⁵² For more information, please refer to: <https://www.epa.gov/system/files/documents/2021-11/final-national-recycling-strategy.pdf>.

²⁵³ For more information, please refer to: <https://www.congress.gov/116/plaws/publ224/PLAW-116publ224.pdf>.

of plastic waste, engage communities, and prevent and reduce food loss and waste. The Program will conduct the following activities:

- Provide national leadership and direction on approaches to reduce environmental impacts and increase the safe and effective reuse/recycling of materials, with a special focus on plastic waste, critical minerals and electronics, and food waste.
- Contribute towards global climate change efforts and demonstrate U.S. leadership internationally through participation in resource efficiency dialogues.
- Implement the National Recycling Strategy collaboratively with stakeholders and track progress towards achieving the national recycling goal. Develop and implement additional strategies in key areas with the greatest potential to reduce the lifecycle impacts of materials, including municipal solid waste; plastic waste, food waste, critical minerals and electronics (*e.g.*, batteries), textiles, and construction and demolition debris.
- Expand efforts to gather data and provide high-quality scientific information on materials management, including finalizing an assessment of the investment required to modernize waste management infrastructure to achieve consistent collection across the Nation and to provide all citizens with access to recycling services on par with access to disposal; collecting data on curbside recycling and single-use plastics; conducting an analysis of different policy approaches for recovering materials; and finalizing a study on the social costs associated with nonrecycling or uncontrolled disposal.
- Administer grant programs for state, territorial, tribal, and local governments to build and enhance recycling capacity, infrastructure, and consumer education and outreach around the country. The grant programs will support state, territorial, and tribal communities seeking to enhance their capacity to recover and recycle materials by modernizing local waste management systems and improving education and outreach.
- Develop and administer a model recycling program toolkit for use in carrying out the consumer education and outreach grant program. Provide assistance to the educational community to promote the introduction of recycling principles and best practices into public school curricula.
- Continue developing and finalizing studies as required by Save Our Seas 2.0 Act to address post-consumer materials management, including plastic waste.
- Continue coordinating with federal agencies to reduce food waste in their facilities, initiate food waste prevention pilot projects, and connect stakeholders with food waste reduction technologies such as anaerobic digestion.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$299.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$163.0) This program change increases programmatic activities including the reduction of waste generation at the source.

Statutory Authority:

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). Save our Seas 2.0 Act, 2020, Pub. L. 116-224, Consolidated Appropriations Act, 2022, Pub. L. 117-103.

Toxics Risk Review and Prevention

Endocrine Disruptors

Program Area: Toxics Risk Review and Prevention

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$5,209	\$7,533	\$7,614	\$81
Total Budget Authority	\$5,209	\$7,533	\$7,614	\$81
Total Workyears	6.6	7.6	7.6	0.0

Program Project Description:

The Endocrine Disruptor Screening Program (EDSP) was established in 1996 under authorities contained in the Food Quality Protection Act (FQPA) and the Safe Drinking Water Act (SDWA) amendments. The EDSP is transitioning to the use of high throughput (HT) screening and computational toxicology (*CompTox*)²⁵⁴ tools to: screen thousands of chemicals for endocrine activity; establish policies and procedures for screening and testing; and evaluate data to ensure chemical safety by protecting public health and the environment from endocrine disrupting chemicals. Implementing EDSP work into the Agency's risk assessment and risk management functions supports EPA's environmental justice (EJ) priorities, both by targeting substances based on effects to sensitive life stages and deploying rapid methods for assessing disparate chemical exposures to vulnerable communities.

EPA has run thousands of chemicals through HT assays, including the estrogen receptor (ER) and androgen receptor (AR) pathway models and the HT steroidogenesis assay. To further support the evaluation and validation of HT approaches, the EDSP has completed some limited targeted *in vivo* Tier 1 & 2 assays and is conducting systematic reviews of relevant *in vivo* data meeting EPA guidelines.

The Agency continues to engage the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) in the scientific peer review of HT tools including *ToxCast*²⁵⁵ to evaluate their use in chemical screening as alternatives to Tier 1 assays and to integrate into more complex evaluation frameworks. Embedded into the EDSP approach is a focus on sensitive life stages during the tiered testing and assessment processes. As this data is incorporated into conceptual risk assessment models, it can specifically inform decisions on vulnerable subpopulations. Further, as EDSP prioritizes future chemical assessments, HT tools such as *ExpoCast*²⁵⁶ will assist in the identification of priority chemical targets with vulnerable subpopulations and EJ concerns for further investigation.

²⁵⁴ For additional information, please visit: <https://www.epa.gov/endocrine-disruption/use-high-throughput-assays-and-computational-tools-endocrine-disruptor>.

²⁵⁵ For additional information, please visit: <https://www.epa.gov/chemical-research/toxicity-forecasting>.

²⁵⁶ For additional information, please visit: <https://www.epa.gov/chemical-research/rapid-chemical-exposure-and-dose-research>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

Under the current tiered framework, imposing the EDSP Tier 1 battery for all 10,000+ substances in the EDSP Universe of Chemicals would cost the regulated community more than \$10 billion in addition to EPA resources for staff to manage the regulatory infrastructure to order and review the tests. Given the current national and international laboratory testing capacity, it would take many years to complete, and involve the sacrifice of many millions of animals. To address these issues, in FY 2023, the Agency will:

- Continue collaborations with EPA's research programs in order to increase scientific confidence in HT approaches which will support a more refined, integrated endocrine activity exposure-based approach to EDSP chemical screening;
- Continue execution of a multi-year plan for implementation of the EDSP for pesticide active ingredients and inerts; and,
- In collaboration with EPA's research programs, continue HT screening on pesticide substances that were not part of the *ToxCast* chemical sets.

In FY 2023 these efforts will address several key milestones including: (1) working towards finalizing EDSP List 1, Tier 1 decisions including potential initiation of Tier 2 assays; and (2) implementing EDSP evaluations of pesticide active ingredients to support pesticide registrations and registration review, in line with Administration priorities on EJ. The EDSP screening and testing framework explicitly includes evaluations on vulnerable subpopulations such as differences among lifestages such as pregnancy, infants, and early childhood. Moreover, the EDSP Tier 1 battery is designed to identify potential effects on reproduction, a key indicator for EJ.

In FY 2021, the EDSP was the subject of an EPA Office of Inspector General (OIG) report;²⁵⁷ the milestones above are consistent with that report. In response to this report, in FY 2022, the EDSP plans to begin annual reporting on progress, develop a short-term strategy to support implementation, develop short-term performance metrics, and release a key document related to use of new approach methodologies (NAMs) in the EDSP. In response to the OIG, EPA has already established better communications between offices with testing responsibilities and updated the EDSP webpage to be more informative for stakeholders.²⁵⁸ In FY 2023, in addition to the milestones above, the EDSP will continue to make progress on additional items to meet FY 2024 deadlines, including potential issuance of test orders on outstanding chemicals and determinations of the endocrine-relevant data to make mandatory as part of the pesticide registration process.

As outlined in the OIG report, during FY 2023, EPA plans to begin and continue incorporating EDSP into the regulatory programs for which it was intended. Planning for this remains ongoing, including development of a new strategic planning document focused on implementation, development of performance measures, and annual reviews. Further, no program has

²⁵⁷ For additional information on OIG's report "EPA's Endocrine Disruptor Screening Program Has Made Limited Progress in Assessing Pesticides," please visit: <https://www.epa.gov/office-inspector-general/report-epas-endocrine-disruptor-screening-program-has-made-limited>.

²⁵⁸ For additional information, please visit: <https://www.epa.gov/endocrine-disruption>.

systematically incorporated HT and *CompTox* tools and results into their regulatory decision-making. A refined, multi-year estimate beyond the baseline testing and review costs cannot be established until the Program has gained more experience with actual decisions.

The EDSP will continue to collaborate with relevant bodies and international partners, such as the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the Organisation for Economic Co-operation and Development (OECD) to maximize the efficiency of EPA's resources and promote adoption of internationally harmonized test methods, particularly high throughput or computational approaches, for evaluating the potential endocrine effects of chemicals. EPA represents the U.S. as either the lead or a participant in OECD projects involving the improvement of assay systems, including the development of non-animal screening and testing methods.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$66.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$15.0) This program change increases contractual support for pesticide evaluations under the EDSP.

Statutory Authority:

Federal Food Drug and Cosmetic Act (FFDCA), § 408(p); Safe Drinking Water Act (SDWA), § 1457.

Pollution Prevention Program

Program Area: Toxics Risk Review and Prevention

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Promote Pollution Prevention

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$11,476</i>	<i>\$12,558</i>	<i>\$17,121</i>	<i>\$4,563</i>
Total Budget Authority	\$11,476	\$12,558	\$17,121	\$4,563
Total Workyears	48.3	49.2	58.2	9.0

Program Project Description:

The Pollution Prevention (P2) Program is one of EPA's primary tools for advancing environmental stewardship and sustainability by federal, state, and tribal governments, businesses, communities, and individuals. The Program also is the primary implementation mechanism for the Pollution Prevention Act (PPA) of 1990. The P2 Program seeks to alleviate environmental problems by leveraging business-relevant approaches to achieve significant reductions in the generation of hazardous releases to air, water, and land; reductions in the use of hazardous materials; reductions in the generation of greenhouse gases; and reductions in the use of water. As a result of these preventative approaches, the P2 Program helps businesses and others reduce costs and access market opportunities. The Program's efforts advance the Agency's priorities to pursue sustainability, to take action on climate change, to make a visible difference in communities, including overburdened and underserved communities with environmental justice (EJ) concerns, and to ensure chemical safety. The P2 Program includes a counterpart P2 Categorical Grants Program in the State and Tribal Assistance Grants (STAG) account.²⁵⁹

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.2, Promote Pollution Prevention in the *FY 2022 – 2026 EPA Strategic Plan*. FY 2023 funding will continue to support the following P2 programs:

P2 Technical Assistance

The P2 technical assistance program supports businesses, states, tribes, and other partners to promote and facilitate the adoption of approaches that make good business sense and improve multi-media environmental conditions and climate impacts through reductions in the release of hazardous materials and pollutants, such as greenhouse gases. EPA invests in analyses, tool development, training, outreach, and partnerships to provide the information and tools needed to bring awareness to industries of P2 approaches and benefits and to enable their widespread implementation to prevent or reduce pollution. The P2 Program leverages the success of EPA

²⁵⁹ For additional information about the EPA P2 Program, please visit: <http://www.epa.gov/p2/>.

grantees and client businesses by amplifying and replicating environmental stewardship, and sustainability successes to similar businesses in other locales.²⁶⁰ Such economies of scale for P2 are central to maximizing the effectiveness of the Program. To further advance EJ in FY 2023, EPA will use analyses of toxic chemical releases from facilities and industries near to communities with EJ concerns (from Toxics Release Inventory [TRI] reporting and other chemical release data) and use sector-specific case studies and best practices—combined with outreach and training—to facilitate adoption of P2 practices in those industries.

Safer Choice Program

EPA certifies and allows use of the Safer Choice label²⁶¹ on products containing ingredients that meet stringent health and environmental criteria and undergo annual audits to confirm the products are manufactured to the Safer Choice Standard's rigorous health and environmental requirements. With hundreds of partner companies and approximately 1,900 certified products in the marketplace, companies have invested heavily in this EPA partnership, and consumer, retailer, and industry interest in Safer Choice—and safer chemical products—continues to grow across chemical product value chains. The Safer Choice Program will expand into additional product categories and seek to increase consumer and commercial recognition of Safer Choice products. In FY 2023, EPA also will continue its Partner of the Year Awards Program,²⁶² which recognizes organizations and companies for their leadership in formulating, and making available to communities, products made with safer ingredients.

In FY 2023, Safer Choice will integrate and address EJ concerns through outreach and partnership activities. Efforts to make Safer Choice-certified products more accessible to communities with EJ concerns will be expanded upon with particular focus on people/communities of color, low-income, tribal and indigenous populations, and other vulnerable populations such as the elderly, children, and those with pre-existing medical conditions. Safer Choice will work with retailers and product manufacturers to help them develop even more products containing safer chemical ingredients that are easy to identify and purchase. Safer Choice also will strengthen partnerships with Minority/Women-owned Businesses (M/WBE) and organizations that serve communities with EJ concerns. Safer Choice will work to empower custodial staff and house cleaning companies through education to gain access to Safer Choice-certified products to improve indoor air quality and reduce exposure-related asthma.²⁶³

To enhance transparency and to facilitate expansion of safer chemical choices and products, EPA has included on the Program's website a list of non-confidential chemicals that meet the Safer Choice Program criteria and that are allowed in the Program's labeled products. To date in FY 2022, this Safer Chemical Ingredients List contains 1,033 safer chemicals, up from 997 in 2021, and EPA will continue to update this list in future years as the Program evaluates additional chemical ingredients and chemical categories and approves products for the use of the Safer Choice label.

²⁶⁰ For additional information, please see the Pollution Prevention Program narrative under the STAG account/appropriation.

²⁶¹ For additional information about the Safer Choice Program, please visit: <https://www.epa.gov/saferchoice>.

²⁶² For additional information on the Partner of the Year Awards program, please visit: <https://www.epa.gov/saferchoice/safer-choice-partner-year-awards>.

²⁶³ For additional information, please see: https://journals.lww.com/joem/Fulltext/2003/05000/Cleaning_Products_and_Work_Related_Asthma.17.aspx.

Environmentally Preferable Purchasing Program (EPP)

The Environmentally Preferable Purchasing Program (EPP)²⁶⁴ implements the direction provided to EPA in the Pollution Prevention Act, the National Technology Transfer and Advancement Act,²⁶⁵ Federal Acquisition Regulations, and Executive Orders which mandate sustainable federal procurement, including through the development and use of sustainability standards, specifications, and ecolabels. In FY 2015 the EPP Program issued the EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing. Through FY 2021, these recommendations have been maintained and updated to include 48 private sector standards and ecolabels that cover 30 product and service categories. These recommendations help federal procurement officials determine which private sector standards and ecolabels, among sometimes dozens within a single purchase category, are appropriate and effective in meeting Federal procurement goals and mandates. The EPP Program's work has generated significant cost savings and environmental benefits to the federal government. For example, for electronics products, the federal government purchased nearly 7 million Electronic Product Environmental Assessment Tool (EPEAT)-registered products in 2018, resulting in a cost savings to the federal government of around \$182.5 million. EPEAT is one of over 40 referenced and relevant private sector standards and ecolabels which help federal purchasers identify and procure environmentally preferable products and services.²⁶⁶ EPA also coordinates federal procurement programs that integrate environmental performance into procurement, including building tools for integrating sustainable procurement into government contracts, and putting tools into the hands of federal procurement officials, collaborating with federal agencies such as the General Services Administration, National Institute of Standards and Technology, the Departments of Defense and Energy, and more. EPA plans to expand its Recommendations for Specifications, Standards and Ecolabels for Federal Purchasing in categories that can support Administration priorities.

EPA is characterizing per- and polyfluoroalkyl substances (PFAS) provisions of existing private sector sustainability standards, ecolabels, and certifications to identify products and purchase categories associated with key PFAS use and to assess and prioritize PFAS conditions of use. With increased resources in FY 2023, EPA will enhance public protection from potential effects of PFAS through labeling to help purchasers identify products that meet specific environmental performance criteria. EPA will conduct the following activities:

- Assessing and recommending additional ecolabels and standards with criteria specifically supporting reduction or elimination of PFAS use in key product categories not yet covered by the EPA Recommendations for Standards, Specifications, and Ecolabels for Federal Purchasing.²⁶⁷
- Build, implement, maintain, and update tools for integrating EPA recommendations into federal e-procurement systems, initiate identification and monitoring of relevant government contracts for sustainable purchasing requirements, and develop tools to ensure that PFAS data is captured for compliance in the Federal Procurement Data System (FPDS).

²⁶⁴ For additional information on the EPP Program, please visit: <http://www.epa.gov/greenerproducts/buying-green-federal-purchasers>.

²⁶⁵ For additional information on the National Technology Transfer and Advancement Act, please visit: <https://www.nist.gov/standardsgov/national-technology-transfer-and-advancement-act-1995>.

²⁶⁶ For additional information on Recommendations for Specifications, Standards and Ecolabels for Federal Purchasing, please visit: <https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>.

²⁶⁷ For additional information, please visit : <https://www.federalregister.gov/documents/2021/12/13/2021-27114/catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability>.

- Initiate and engage in private sector standards development activities that address product categories known to contain PFAS.
- Create a central product registry to identify products that meet EPA's assessment of PFAS specifications.
- Collaborate with the Department of Defense (DoD) on performance-based, rather than material-based, specifications and standards for equipment (e.g., textiles, coatings, firefighting foam) for DoD and Department of Homeland Security uses.
- Work with other federal agencies and the private sector to initiate a performance-based technology innovation challenge for a set of PFAS-free product categories for which use of non-PFAS options could be technically and economically feasible with respect to key federal purchasing categories.

To further support EPA's goals for equity and EJ, the EPP Program will begin to develop and implement training and outreach for disproportionately affected communities, as well as state, tribal, and local governments, to assist in facilitating product and service procurement choices that are environmentally sound and promote human and environmental health.

Green Chemistry

The Green Chemistry Program²⁶⁸ fosters the sustainable design of chemical products and processes. The Program also analyzes green chemistry innovations and works with partners and external stakeholders to facilitate market adoption and penetration of new commercially successful chemistries and technologies. Its Green Chemistry Challenge Awards serve a critical role in raising the profile, importance, and credibility of innovative and market-ready green and sustainable chemistry technologies. During the Program's more than 25 years of progress, EPA has received more than 1,800 nominations and presented awards to 123 technologies, demonstrating the interest among stakeholders to be recognized at the national level for developing market-ready and/or market-mature green chemistry solutions. The contribution of greener chemistries to addressing climate change is very clear. Winning technologies are estimated to eliminate 7.8 billion pounds of carbon dioxide equivalents released to air—the equivalent of taking 770,000 cars off the road each year.²⁶⁹ In FY 2023, EPA will begin to utilize training materials developed in FY 2022 to help state, tribal, local, and industry stakeholders acquire information and understanding of the benefits from these innovations.²⁷⁰

In FY 2023, the Green Chemistry Program will begin to work with awardees and nominees to pursue the goal of market-oriented environmental and economic progress through increased adoption of these innovations. EPA will begin to develop training materials to help state, tribal, local, and industry stakeholders acquire information and understanding of the benefits from these innovations and will support and lead portions of EPA's responsibilities for implementation of the Sustainable Chemistry Research and Development Act of 2020.

²⁶⁸ For additional information on the Green Chemistry Program, please visit: <https://www.epa.gov/greenchemistry>.

²⁶⁹ For additional information, please visit: <https://www.epa.gov/greenchemistry/information-about-green-chemistry-challenge>.

²⁷⁰ P2 Training materials are available to the public on various EPA websites including but not limited to: (1) <https://www.epa.gov/p2/grant-programs-pollution-prevention> (Grant Programs for P2); (2) <https://www.epa.gov/p2/p2-grant-program-resources-applicants> (Resources for grant applicants [FAQs, application checklist, P2-EJ Facility Mapping Tool and a recorded webinar]); (3) <https://www.epa.gov/p2/pollution-prevention-tools-and-calculators> (P2 Tools and calculators); and (4) <https://www.epa.gov/p2/p2-resources-business> (P2 resources for business).

Performance Measure Targets:

(PM P2mtc) Reduction in million metric tons of carbon dioxide equivalent (MMTCO ₂ e) released per year attributed to EPA pollution prevention grants.	FY 2022 Target	FY 2023 Target
	1.2	1.2
(PM P2sc) Number of products certified by EPA's Safer Choice program.	FY 2022 Target	FY 2023 Target
	1,950	2,000

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$355.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$4,208.0 / +9.0 FTE) This program change provides additional funding and FTE to enhance protection of the public from potential effects of PFAS through labeling as well as to implement Administration priorities related to PFAS. This investment also includes \$1.689 million in payroll.

Statutory Authority:

Pollution Prevention Act of 1990 (PPA); Toxic Substances Control Act (TSCA).

Toxic Substances: Chemical Risk Review and Reduction

Program Area: Toxics Risk Review and Prevention

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$72,643</i>	<i>\$60,280</i>	<i>\$124,243</i>	<i>\$63,963</i>
Total Budget Authority	\$72,643	\$60,280	\$124,243	\$63,963
Total Workyears	259.2	331.7	532.3	200.6

Total program work years in FY 2023 include 51.6 FTE funded by TSCA fees. TSCA Service Fees are not included in the budget formulation, but EPA is projected to collect approximately \$4.65 million in fees in FY 2023, including fees collected from one TSCA Section 6 Manufacturer-Requested Risk Evaluations should the request be received and granted. Projected collections also are subject to potential changes in fee levels in response to statutory requirements for the TSCA User Fee Rule to be updated every three years.

Program Project Description:

EPA has significant responsibilities under the Toxic Substances Control Act (TSCA) for ensuring the safety of chemicals that are already in or are entering into commerce and addressing unreasonable risks to human health and the environment. These responsibilities are executed by the Agency through the Chemical Risk Review and Reduction (CRRR) Program, which works to ensure the safety of:

- Existing chemicals,²⁷¹ by collecting chemical data, prioritizing chemicals for risk evaluation on the basis of that data, conducting risk evaluations, and developing and implementing risk management actions to prevent any unreasonable risk posed by their manufacture, processing, use, distribution in commerce and/or disposal;
- New chemicals, by reviewing new chemical submissions from manufacturers and processors and taking action to mitigate potential unreasonable risks to health or the environment before those chemicals can enter the marketplace; and
- Other chemicals that may pose unreasonable risks to human health and the environment.

The CRRR Program will play an important role in achieving the Administration's goals to enhance environmental justice (EJ) and tackle the climate crisis. Examples include: engaging tribes and other overburdened and underserved communities with EJ concerns in identifying exposure pathways; adhering to EPA's Guidance on Considering Environmental Justice During the

²⁷¹ "Existing Chemicals" are those already in use when TSCA was first enacted in 1976 and those which have since gone through review by the TSCA New Chemicals Program. These include certain prevalent, high-risk chemicals known generally as "legacy chemicals" (e.g., PCBs, mercury), which were previously covered in a separate Chemical Risk Management (CRM) budget justification. The CRM program area was combined with Chemical Risk Review and Reduction effective FY 2015.

Development of an Action²⁷²; and ensuring that TSCA chemical safety data analytical tools are made publicly available in ways that are accessible to communities with EJ concerns.

TSCA authorizes EPA to collect fees from chemical manufacturers and processors to defray up to 25 percent of the costs for administering certain sections²⁷³ of TSCA.²⁷⁴ Fee levels are set by regulation and may be adjusted on a three-year basis for inflation and to ensure that fees defray approximately 25 percent of relevant costs. The TSCA Fee rule became effective on October 1, 2018.²⁷⁵ CRRR Program fees collected or projected to be collected in FY 2019–FY 2021 under this rule equated to approximately 14 percent of associated expenditures for those three fiscal years. EPA proposed revisions to the rule in December 2020 but plans to re-propose in light of public comments. As such, toward the end of FY 2023, EPA expects to finalize an amended fee rule that would defray up to 25 percent of relevant costs, as statutorily allowed.²⁷⁶

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

The 2016 amendments to TSCA imposed significantly increased responsibilities for the CRRR Program. Building on the request included in the FY 2022 President’s Budget, the Agency is requesting an additional 200.6 FTE and \$63.9 million for the CRRR Program in FY 2023, which includes \$4.7 million and 11 FTE to support the implementation of EPA’s PFAS Strategic Roadmap. EPA will emphasize the integrity of scientific products, adherence to statutory intent and requirements, and timelines applicable to pre-market review of new chemicals, chemical risk evaluation and management, data development and information collection, the review of Confidential Business Information (CBI) claims, and other statutory requirements. These requested resources are essential for EPA to address its workload, including:

- Maintaining at least 20 EPA-initiated existing chemical risk evaluations in development at all times and completing EPA-initiated existing chemical risk evaluations within 3.5 years.
- Issuing protective regulations in accordance with statutory timelines addressing all unreasonable risks identified in each risk evaluation.
- Establishing a pipeline of chemicals prioritized for future risk evaluation.
- Using test orders and a new strategy for tiered data collection, requiring development of data critical to existing chemical risk evaluation and risk management activities, and systematically

²⁷² For more information, please visit: <https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action>.

²⁷³ The costs of implementing TSCA Sections 4-6 are defrayable up to the statutory caps, as are the costs of collecting, processing, reviewing and providing access to and protecting from disclosure, as appropriate, chemical information under Section 14.

²⁷⁴ The authority to assess fees is conditioned on appropriations for the CRRR Program, excluding fees, being held at least equal to the amount appropriated for FY 2014.

²⁷⁵ The statute authorizes EPA to collect fees from chemical manufacturers (including importers) and, in limited instances, processors who: are required to submit information (Section 4); submit notification of or information related to intent to manufacture a new chemical or significant new use of a chemical (Section 5); manufacture, (including import) a chemical substance that is subject to an EPA-initiated risk evaluation (Section 6); or request that EPA conduct a risk evaluation on an existing chemical (Section 6), subject to the Agency’s approval of the request.

²⁷⁶ This rule may not go into effect until FY 2023.

reviewing data submitted to the EPA for scientific reliability, relevance, and transparency as mandated by the 2016 TSCA Amendments.

- Conducting risk assessments for approximately 650 new chemical notices and exemption submissions, and manage the identified risks associated with the chemicals.
- Having up to five risk evaluations requested by manufacturers in development.
- Developing and implementing a collaborative research program focused on approaches for performing risk assessments on new chemical substances.
- Reviewing and making determinations on confidential business information (CBI) claims contained in TSCA submissions; making certain CBI information available to stakeholders; and publishing identifiers for each chemical substance for which a confidentiality claim for specific chemical identity is approved.
- Carrying out other required TSCA CRRR activities as described below.

Primary TSCA Implementation Activities

Section 4: Testing of Chemical Substances and Mixtures. In January 2021, the Agency issued Test Orders for nine additional chemicals currently undergoing TSCA risk evaluation and will issue additional test orders for these chemicals and other chemicals undergoing risk evaluation in FY 2022. In addition, EPA will continue to implement and refine the National PFAS Testing Strategy in FYs 2022 and 2023. Accordingly, EPA is committed to issuing test orders for at least 24 PFAS chemicals in FY 2022. In FY 2023, the resources requested will enable the Agency to review test protocols and test data submitted in response to any recently issued Test Orders and previously issued Test Rules and Enforceable Consent Agreements (ECAs); begin implementation of additional phases of the National PFAS Testing Strategy; and issue additional Test Orders and promulgate Test Rules and/or ECAs. In addition, in FY 2023, EPA intends to further implement the PFAS Testing Strategy by refining the initial structural categories using data from EPA's Office of Research and Development (ORD) as well as further evaluating degradation products and exposure data. The EPA expects to issue further TSCA Test Orders after the categories are refined, as well as to promulgate test rules and/or ECAs.

Section 5: New Chemicals. The New Chemicals Program is important in ensuring the safety of new chemicals before they enter commerce. The 2016 TSCA amendments significantly changed the way EPA implemented the New Chemicals Program. Under the prior law, EPA only issued determinations for about 20 percent of new chemical submissions, whereas under the amended law, EPA is required to issue determinations for 100 percent of new chemical submissions (a five-fold increase). In FY 2023, the Agency expects to conduct risk assessments for approximately 650 new chemical notices and exemption submissions;²⁷⁷ make affirmative determinations on whether unreasonable risks are posed under those chemicals' conditions of use; manage identified risks associated with the chemicals through the issuance of Orders and Significant New Use Rules (SNURs); and require the development of additional data where information is insufficient to conduct a reasoned evaluation.²⁷⁸ EPA also intends to continue its commitment to transparency by

²⁷⁷ For example, Pre-Manufacture Notices (PMNs), significant new use notifications (SNUNs), microbial commercial activity notices (MCANs), low volume exemptions (LVEs), low releases and low exposures exemptions (LoREX), test marketing exemption (TME), TSCA experimental release application (TERA) and Tier 1 and 2 exemptions.

²⁷⁸ For PMNs, MCANs and SNUNs, as required by law, the Agency must generally complete these review, determination, and associated risk management activities within 90-days of receiving the submission, subject to extensions or suspension under certain circumstances.

making new chemical notices and EPA information generated in the review of notices available to the public via the *ChemView* database²⁷⁹ and on EPA websites. In FY 2023, EPA also will propose SNURs for approximately 150 consent orders. Additionally, EPA is implementing a performance metric to measure compliance with past TSCA regulatory actions. These actions include consents orders and SNURs issued for PFAS chemicals.

Section 6: Existing Chemicals. Where unreasonable risks in existing chemicals are found, the Agency also must commence risk management action under TSCA Section 6 to address those risks. The resources requested in FY 2023 are critical for the Agency to continue implementing these additional requirements to address the risks of existing chemicals, including:

- **Prioritization** is the initial step in the process of evaluating existing chemicals under TSCA and is codified in a final Chemical Prioritization Process rule.²⁸⁰ The purpose of prioritization is to designate a chemical substance as either High-Priority for further risk evaluation, or Low-Priority for which risk evaluation is not warranted at the time.^{281,282} TSCA requires that upon completion of a risk evaluation for a High-Priority chemical, EPA must designate at least one additional High-Priority chemical to take its place, ensuring that at least 20 EPA-initiated risk evaluations are constantly underway. In FY 2023, EPA will continue working to identify additional High-Priority chemicals by obtaining, validating, and analyzing chemical safety data to identify chemicals for which sufficient data are available to conduct scientifically sound risk evaluations and the order in which such chemicals are evaluated.
- **Risk Evaluation:** EPA initiated risk evaluations for the first 10 chemicals in December 2016. The Agency missed the 3.5-year statutory deadline for completing TSCA risk evaluations for nine of the chemicals, and work on many of those chemical risk evaluations has continued.²⁸³ In FY 2021 and FY 2022, developed approaches for the consideration of exposure pathways (*i.e.*, air, water, disposal) that were originally omitted from the scopes of the HPS and MRRE risk evaluations, and to address “fenceline” risk (risks to exposed populations in communities adjacent to the perimeter of manufacturing facilities, often vulnerable and underserved populations) for 7 of the first 10 chemical risk evaluations. This work added to the challenge of completing additional risk evaluations, and in FY 2023 this work will continue.²⁸⁴

²⁷⁹ To access *ChemView*, please visit: <https://chemview.epa.gov/chemview>.

²⁸⁰ For additional information, please visit: <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0636-0074>.

²⁸¹ TSCA required that EPA designate by December 2019 at least 20 chemical substances as High-Priority for risk evaluation, and also at least 20 chemical substances as Low-Priority. On December 20, 2019, EPA finalized the designation of 20 chemical substances as High-Priority for upcoming risk evaluations. For additional information, please visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/chemical-substances-undergoing-prioritization-high>.

²⁸² On February 20, 2020, EPA finalized the designation of 20 chemical substances as Low-Priority. For additional information, please visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/low-priority-substances-under-tsca>.

²⁸³ EPA removed consideration of personal protective equipment (PPE) unreasonable risk determinations for the first 10 chemical risk evaluations, re-examined the risk evaluations of seven of those chemicals to address overlooked and/or inadequately assessed exposure pathways (including those affecting fenceline, underserved or disproportionately burdened communities), is developing a supplemental RE for one chemical due to omission of exposure pathways, and, in part as a result of litigation against the Agency, is conducting a second risk evaluation for asbestos to include types and uses that were excluded from the first one.

²⁸⁴ In January 2022, EPA released for public comment and peer review version 1.0 of a screening methodology that will be used to further examine whether the policy decision to exclude air and water exposure pathways from the risk evaluations will lead to a failure to identify and protect fenceline communities. Review of the screening level methodology will include review by the Science Advisory Committee on Chemicals (SACC). *See*, <https://www.epa.gov/newsreleases/epa-releases-screening-methodology-evaluate-chemical-exposures-and-risks-fenceline>.

EPA initiated risk evaluations for the first set of 20 High-Priority chemicals in December 2019.²⁸⁵ On September 4, 2020, EPA released final scoping documents for these chemicals²⁸⁶ with the 20 evaluations required to be completed by December 2022, or June 2023 if statutorily authorized extensions are required to be exercised. The Agency will expand the focus of the risk evaluations to ensure that exposure pathways affecting the general public, fenceline communities, and overburdened/underserved/disproportionately burdened communities are properly evaluated in accordance with the law. Specifically, it is expected that the Agency will include expanded consideration of potentially exposed and susceptible subpopulations, including environmental justice considerations, as a result of engagement with overburdened and underserved communities through mechanisms such as the National Tribal Operations Committee (NTOC)²⁸⁷ and the National Tribal Toxics Council (NTTC).²⁸⁸

The Agency has experienced delays in obtaining responses from TSCA Section 4 Test Orders and Section 8 Data Gathering Rules intended to provide information critical to the completion of the evaluations. In addition, manufacturers may submit requests to EPA to evaluate specific additional chemicals. The first two Manufacturer Requested Risk Evaluations (MRREs) began in FY 2020. A third was started in FY 2021, and a fourth request is currently being considered. Those initial MRREs will continue throughout FY 2022 and are for chemicals that were on the 2014 TSCA Work Plan.²⁸⁹ The resources requested for FY 2023 will support efforts to meet statutory mandates and other requirements while maintaining the Agency's commitment to evidence-based decisions guided by the best available science and data.

- **Risk Management:** When unreasonable risks are identified in the final risk evaluation, EPA must promulgate risk management action rulemakings under TSCA Section 6(a) to address the unreasonable risk. This work will adhere to EPA's Guidance on Considering Environmental Justice During the Development of an Action and its companion Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.²⁹⁰ EPA commenced development of risk management actions in FYs 2020 and 2021 after determining that each of the first 10 chemicals evaluated under Section 6 presented unreasonable risk of injury to health or the environment under the assessed conditions of use. EPA will continue development of these rulemaking actions in FY 2023, including issuance of proposed rules for certain chemicals. EPA also will continue or begin developing final rules for actions proposed in FY 2022 and FY 2023, with anticipated promulgation in FY 2024.²⁹¹

²⁸⁵ For additional information, please visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/chemical-substances-undergoing-prioritization-high>.

²⁸⁶ For additional information, please visit: <https://www.epa.gov/chemicals-under-tsca/epa-releases-final-scope-documents-and-list-businesses-subject-fees-next-20>.

²⁸⁷ For additional information on NTOC, please visit: <https://www.epa.gov/tribal/tribal-partnership-groups#ntoc>

²⁸⁸ For additional information on NTTC, please visit: <https://www.epa.gov/chemicals-under-tsca/national-tribal-toxics-council-nttc-technical-support-request-applications>

²⁸⁹ See <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-work-plan-chemicals>.

²⁹⁰ For additional information, please visit: <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

²⁹¹ EPA is re-examining the risk evaluations of seven of those chemicals to address overlooked and/or inadequately assessed exposure pathways (including those affecting overburdened, underserved or disproportionately burdened communities), which may impact risk management actions under development. See, <https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations>. As a result, proposed rulemakings will not be published for public comment until the review and any update of the risk evaluations are complete. EPA will continue to engage stakeholders in dialogue regarding these risk management actions to ensure the Agency has the benefit of input from interested parties. This engagement will include meetings

TSCA also mandated that EPA promulgate Section 6 risk management rules for certain Persistent, Bioaccumulative, and Toxic (PBT) chemicals on the 2014 TSCA Work Plan without undertaking further risk evaluation.²⁹² EPA issued five final rules in January 2021. EPA requested and received comment on the January 2021 PBT rules and, in September 2021, announced its intent to initiate a new rulemaking. EPA anticipates proposing new rules for five PBT chemicals. In FY 2023, EPA anticipates issuing further proposed revisions to the PBT rules.

Section 14: Confidential Business Information. EPA is required under TSCA Section 14 to review and make determinations on CBI claims contained in TSCA submissions; process requests for and make certain CBI information available to states, tribes, health and medical professionals, first responders, under defined circumstances; and assign and publish unique identifiers for each chemical substance for which a confidentiality claim for specific chemical identity is approved. In FY 2023, EPA will assign unique identifiers to chemicals where CBI claims for chemical identity are approved and expects to complete CBI claim reviews for more than 2,000 new cases, and approximately 1,500 chemical identity claims.

TSCA Information Technology (IT) and Data Tools Infrastructure. IT systems development and maintenance will continue in FY 2023 with the goal of minimizing reporting burdens on industry and streamlining data management by EPA, including the following activities:

- Continuing enhancement of the TSCA Chemical Information System to reduce manual handling of data and increase internal EPA access to data relevant to chemical assessments and expedite review of chemicals.
- Initiating development of new tools for hazard and exposure identification, assessment, and characterization, while improving existing tools to better assess chemical risks.
- Maintaining the functionality of *ChemView*²⁹³ and plan for expanding the information it makes available to the public to include newly completed chemical assessments, worker protection information, and other new data reported to EPA under TSCA.
- Completing the TSCA CBI LAN assessment in preparation for network modernization.

Implementing TSCA depends on the collection and availability of information on chemicals from a wide variety of public and confidential sources. The EPA's data currently resides in multiple formats including paper files, microfiche, and numerous old electronic file formats. A critical need for improving EPA's performance on TSCA implementation is modernizing the IT systems necessary for chemical data collation, storage, and curation, and to make the data received under TSCA available in structured and consistent formats. The funding requested will support the following activities: initiating modernization of the existing TSCA IT infrastructure; enhancing the New Chemical Review (NCR) system; initiating steps toward automating publication of New Chemical Consent Orders and SNURs; continuing efforts regarding remaining TSCA CBI review workflow enhancements; analyzing and updating TSCA records data to identify and organize records for publication; making progress toward the development of a framework for enabling CIS

with key stakeholders and participation in events such as conferences and trade association meetings where EPA and stakeholders can share information.

²⁹² TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Section 6(h) (1) and (2).

²⁹³ For additional information, please visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/introduction-chemview>.

to automatically assign unique identifiers (UIDs) as CBI claims are approved; making progress in the effort to digitize the remaining legacy 8(e)s and publish in *ChemView*; and initiating digitization of legacy documents.

Chemical Data Management Modernization. The international regulatory community has been moving towards using the International Uniform Chemical Information Database (IUCLID) to capture, store, maintain, and exchange data on intrinsic and hazardous properties of chemical substances. Data in IUCLID is centered around standardized reporting templates consistent with internationally accepted test guidelines and has CBI protection built in. EPA has begun to pilot an IUCLID framework, but resource constraints have limited EPA's implementation and adoption of IUCLID. With increased resources in FY 2023, the TSCA Program will collaborate with ORD to implement IUCLID to capture, store, and maintain data on intrinsic and hazard properties of chemicals. The Agency also will work with international partners to modify software applications to ensure EPA's unique needs and federal IT requirements are incorporated. Along with integration and consolidation of other legacy data systems, this initiative will modernize EPA's chemical data management infrastructure and deliver more efficient searching, collating, managing, and integrating data on chemicals, resulting in significant time and cost savings.

*Collaborative Research Program to Support New Chemical Reviews.*²⁹⁴ In FY 2023, EPA will develop and implement a multi-year collaborative research program in partnership with ORD and other federal agencies. This collaboration is focused on approaches for performing risk assessments on new chemical substances under TSCA. The results of the effort are expected to bring innovative science to new chemical reviews, modernize the approaches used, and increase the transparency of the human health and ecological risk assessment process. The resources requested for FY 2023 are essential for EPA to implement the new chemicals program in accordance with statutory mandates and to address the backlog of older submissions. These resources also are critical to ensuring that the Agency can conduct robust risk assessments using best available science and data within the statutory timelines.

Other TSCA Sections, Mandates and Activities

*Chemical Data Reporting (CDR) & Tiered Data Reporting (TDR) Rule.*²⁹⁵ In FY 2023, EPA plans to publish a rule that expands reporting requirements for chemicals that are candidates for—or selected as—high priority substances. The purpose is to acquire the most relevant and applicable data that will support risk evaluation. In FY 2023, EPA plans to finalize the Rule, responding to comments from the proposed rulemaking and modifying CDR requirements.

Other Section 8 Activities. In FY 2023, EPA will: publish a final section 8(a) rule for Asbestos; publish a final section 8(a)(7) rule for Per- and Polyfluoroalkyl Substances (PFAS); analyze 300

²⁹⁴ See, <https://www.epa.gov/newsreleases/epa-announces-collaborative-research-program-support-new-chemical-reviews>.

²⁹⁵ Section 8(a) of TSCA requires manufacturers (including importers) to provide EPA with information on the production and use of chemicals in commerce. In March 2020, EPA amended the Chemical Data Reporting (CDR) rule to reduce burden for certain CDR reporters, improve data quality and align reporting requirements with amended TSCA. The recent Calendar Year 2020 CDR Reporting Cycle, which occurs every four years and covers CY 2016-2019, commenced on June 1, 2020, and concluded on January 29, 2021.

Substantial Risk (Section 8(e)) Notifications submitted by industry;²⁹⁶ and continue issuing other data gathering rules to obtain data needed for Section 6 prioritization and risk evaluations.

PFAS Roadmap Support. Per- and polyfluoroalkyl substances (PFAS) have been manufactured and used in a variety of industries globally since the 1940s, and they are still being used today. FY 2023 work will include: publishing and implementing a PFAS national testing strategy; ensuring a robust review process for new PFAS; reviewing previous decisions on PFAS; closing the door on abandoned PFAS and uses; and implementing a new PFAS reporting rule; and leading the development of a voluntary PFAS Stewardship Program. The funding requested in the FY 2023 President's Budget will allow EPA to: improve the Agency data submission process for test data and ensuring engagement with test order recipients to facilitate robust data collection; review study plans required to be submitted as a result of test orders and data submitted pursuant to the first round of test orders issued under TSCA for human health effects; integrate submitted data into systematic review databases; and analyze existing data in preparation for issuing additional orders to require additional testing for chemicals already subject to testing.

Polychlorinated Biphenyls (PCBs). PCBs are a nationwide problem and found in every region. TSCA requires essential work in evaluating a site for PCB exposures and reducing risks at that site. EPA regions do this by making site-specific PCB "use" determinations, evaluating exposures, and providing recommendations and specialized technical support to address the risks associated with PCBs legally and illegally "in use." EPA's regional offices will work with building owners to implement practical interim measures; develop outreach and technical assistance materials to prevent or reduce exposure to PCBs; and conduct risk evaluation of PCB exposure at local sites.

Mercury. In FY 2023, EPA will maintain the Mercury Electronic Reporting Application²⁹⁷ and conduct outreach to stakeholders on reporting requirements. EPA also will continue work under the Mercury Export Ban Act and related amendments related to the prohibition of export of certain mercury compounds, to support compliance with the Minamata Convention on Mercury, to which the United States is a party. EPA will collect and prepare information for publication in the CY 2023 update to the national mercury inventory and consider recommending actions to further reduce mercury use.

TSCA Citizen Petitions. In FY 2023, EPA will continue to meet the requirements of Section 21 of TSCA, which authorizes citizen petitions for the issuance, amendment, or repeal of certain actions (rules and orders) promulgated under specific components of TSCA Sections 4, 5, 6, and 8. The Agency must grant or deny a Section 21 petition within 90 days. If EPA grants a petition, the requested action must be initiated in a timely fashion. EPA has received 29 TSCA Section 21 petitions since September 2007.²⁹⁸

Formaldehyde Standards for Composite Wood Products. In FY 2023, EPA will continue implementing regulations under the TSCA Title VI Formaldehyde Standards for Composite Wood

²⁹⁶ TSCA Section 8(e) Notifications require EPA be notified immediately when a company learns that a substance or mixture presents a substantial risk of injury to health or the environment.

²⁹⁷ The Mercury Electronic Reporting application is an electronic reporting interface and database within the Central Data Exchange (CDX).

²⁹⁸ For additional information, please visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21>.

Products Act (Public Law 111-199), which established national emission standards for formaldehyde in new composite wood products.²⁹⁹

TSCA User Fees. Section 26 of TSCA authorizes EPA to collect user fees to offset 25 percent of the Agency's full costs for implementing TSCA sections 4, 5, 6, and 14.³⁰⁰ In FY 2021, EPA collected \$28.65 million: \$3.35 million from section 5, \$24.05 million from 19 of the 20 section 6 EPA-Initiated Risk Evaluations, and \$1.25 million from one section 6 MRRE for a TSCA Work Plan chemical.^{301,302} EPA's FY 2021 collections were as follows:

TSCA Section	Amount Collected
Section 5	\$3.35 million
Section 6 EPA-Initiated Risk Evaluations	\$24.05 million
Section 6 MRREs	\$1.25 million
<i>Total</i>	<i>\$28.65 million</i>

Because nearly \$17 million of the collections for the 19 section 6 Risk Evaluations was not due to be paid until September 2, 2021, those funds were not accessible to EPA until FY 2022. EPA will apportion FY 2021 section 6 collections over the risk evaluation lifecycle (3.5 years). EPA expects to collect approximately \$5.0 million in FY 2022³⁰³ and \$4.65 million in FY 2023.³⁰⁴ Projected collections also are subject to potential changes in fee levels, which are required to be updated every three years under TSCA.³⁰⁵

Cumulative risk methodologies. EPA is conducting aggregate exposure and cumulative risk approaches to characterizing chemical exposure and risk in risk evaluations under TSCA. In FY 2023, the following foundational activities will be conducted to support statutory deadlines:

- Develop approaches to determine when aggregating chemical exposure across conditions of use is applicable.
- Develop approaches to identify co-exposure to chemicals to inform prioritization and to determine when cumulative assessments should be considered for relevant chemicals.
- Develop approaches for conducting aggregate exposure and cumulative risk assessments.
- Evaluate applicability and feasibility of biomonitoring data.
- Update and develop exposure and hazard models.
- Support for scientific and other publications.

Continuous Improvement of TSCA Implementation. In FY 2023, the Agency will continue to monitor and evaluate its progress related to core responsibilities under TSCA, such as completing

²⁹⁹ For additional information, please visit: <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products>.

³⁰⁰ TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Section 26(b) (1) and (4).

³⁰¹ The Agency invoiced \$88.2 thousand for Section 4 Test Orders in FY 2020 and FY 2021 but did not start receiving submissions until FY 2022.

³⁰² The Agency invoiced \$88.2 thousand for Section 4 Test Orders in FY 2020 and FY 2021 but did not start receiving submissions until FY 2022.

³⁰³ \$1.6 million from the remaining section 6 EPA-Initiated Risk Evaluations invoices and \$3.4 million from section 5 submissions and section 4 Test Orders.

³⁰⁴ \$3.4 million in section 5 submissions and section 4 Test Orders and an additional amount from one TSCA section 6 Manufacturer-Requested Risk Evaluation at \$1.25M if the MRRE request is granted.

³⁰⁵ For additional information, please visit: <https://www.epa.gov/tsca-fees/fees-administration-toxic-substances-control-act>.

all EPA-initiated risk evaluations and associated risk management actions for existing chemicals within statutory timelines. In addition, EPA plans to further reduce review times and reduce the number of cases under review for more than 90 days for Section 5 new chemicals (PMNs, MCANs, and SNUNs). EPA also will undertake other forms of assessment and data gathering in FY 2023. Based on experience and peer review feedback, EPA is further refining its methods for conducting systematic review and will seek peer review of its TSCA Systematic Review Protocol in FY 2022. The Agency is collaborating with other agencies in this effort, including with the Interagency Testing Committee (ITC). In FY 2023, EPA will evaluate the information reported in response to the 8(d) rule for relevance to the risk evaluations for High-Priority chemicals using systematic review methods, which will enhance risk evaluations and EPA's ability to determine potential risk.

Performance Measure Targets:

(PM TSCA4) Number of HPS TSCA risk evaluations completed within statutory timelines.	FY 2022 Target	FY 2023 Target
	0	8
(PM TSCA5) Percentage of existing chemical TSCA risk management actions initiated within 45 days of the completion of a final existing chemical risk evaluation.	FY 2022 Target	FY 2023 Target
	100	100
(PM TSCA6a) Percentage of past TSCA new chemical substances decisions with risk mitigation requirements reviewed.	FY 2022 Target	FY 2023 Target
	5	25
(PM TSCA6b) Percentage of TSCA new chemical substances with risk mitigation requirements reviewed for adherence/non-adherence with TSCA Section 5 risk mitigation requirements that are determined to adhere to those requirements.	FY 2022 Target	FY 2023 Target
		25

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$3,173.0) This net change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$51,796.0 / +181.6 FTE) This increase enables EPA to develop and review data critical to existing chemical risk evaluation and risk management activities; update and develop 21st century information technology and data tools to meet the increasing demands; and begin to transform New Chemicals review into an efficient and sustainable process to complete cases in keeping with the statutory requirements. This investment includes \$32.035 million in payroll.
- (+\$4,736.0 / +11.0 FTE) This program change supports the implementation of the PFAS Strategic Roadmap. With these resources, EPA will fund the PFAS national testing strategy, review previous decisions on PFAS, establish a voluntary PFAS stewardship program, create/update IT infrastructure, and list and analyze new PFAS data. This investment includes \$1.936 million in payroll.

- (+\$2,528.0 / +3.0 FTE) This program change allows EPA to advance cumulative risk methodologies, which includes developing approaches for conducting aggregate exposure and cumulative risk assessments under TSCA that will be particularly important in evaluating high priority chemicals. This investment includes \$528.0 thousand in payroll.
- (+\$1,730.0 / +5.0 FTE) This program change provides regional capacity to carry out site-specific PCB “use” determinations, evaluating exposures and providing recommendations and specialized technical support to address the risks associated with PCBs legally and illegally “in use.” These efforts will contribute to reduce risks and current exposures to workers and children, particularly in overburdened and underserved communities, and to advance agency commitments to EJ. This investment includes \$880.0 thousand in payroll.

Statutory Authority:

Toxic Substances Control Act (TSCA).

Toxic Substances: Lead Risk Reduction Program

Program Area: Toxics Risk Review and Prevention

Goal: Ensure Safety of Chemicals for People and the Environment

Objective(s): Ensure Chemical and Pesticide Safety

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$11,991</i>	<i>\$13,129</i>	<i>\$13,749</i>	<i>\$620</i>
Total Budget Authority	\$11,991	\$13,129	\$13,749	\$620
Total Workyears	63.0	62.9	62.9	0.0

Program Project Description:

EPA's Lead Risk Reduction Program contributes to the goal of reducing lead exposure and works toward addressing historic and persistent disproportional vulnerabilities of certain communities.³⁰⁶ This program thereby plays an important role in achieving the Administration's goals to enhance environmental justice (EJ) and equity by:

- Establishing standards governing lead paint hazard identification and abatement practices;
- Establishing and maintaining a national pool of certified firms and individuals who are trained to carry out lead paint hazard identification and abatement practices and/or renovation, repair, and painting projects while adhering to the lead-safe work practice standards and minimizing lead dust hazards created in such projects; and
- Providing information and outreach to housing occupants and the public so they can make informed decisions and take actions about lead paint hazards in their homes.

Lead is highly toxic, especially to young children. Exposure to lead is associated with decreased intelligence, impaired neurobehavioral development, decreased stature and growth, and impaired hearing acuity. According to the Centers for Disease Control and Prevention (CDC), no safe blood lead level in children has been identified, and effects of lead exposure cannot be corrected.^{307,308} Reducing exposure to lead-based paint (LBP) in old housing continues to offer the potential to significantly decrease blood lead levels in the largest number of children. Housing units constructed before 1950 are most likely to contain LBP. The most recent national survey estimated that 37.1 million homes in the U.S. have LBP and that 23.2 million homes have significant LBP hazards.³⁰⁹ Children living at or below the poverty line who live in older housing are at greatest risk. Additionally, some racial and ethnic groups and those living in older housing are

³⁰⁶ Childhood blood lead levels (BLL) have declined substantially since the 1970s, due largely to the phasing out of lead in gasoline and to the reduction in the number of homes with lead-based paint hazards. The median concentration of lead in the blood of children aged 1 to 5 years dropped from 15 micrograms per deciliter in 1976–1980 to 0.7 micrograms per deciliter in 2013–2014, a decrease of 95%. *See, America's Children and the Environment* (EPA, 2019), found at: <https://www.epa.gov/americaschildrenenvironment>.

³⁰⁷ Centers for Disease Control and Prevention, Blood Lead Levels in Children, found at: <http://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm>.

³⁰⁸ *America's Children and the Environment* (EPA, 2019), found at: <https://www.epa.gov/americaschildrenenvironment>.

³⁰⁹ *See, American Healthy Homes Survey, Lead and Arsenic Findings* (HUD, 2011), found at: https://www.hud.gov/sites/documents/AHHS_REPORT.PDF.

disproportionately affected by LBP.³¹⁰ Because of historic and persistent disproportional vulnerabilities of certain racial, low-income, and overburdened and underserved communities, the Lead Risk Reduction Program has the potential to create significant EJ gains and provides strategic opportunities to advance EPA's work in support of the Administration's goals to enhance EJ and equity as seen in the draft *Strategy to Reduce Lead Exposures and Disparities in U.S. Communities*.³¹¹

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 7/Objective 7.1, Ensure Chemical and Pesticide Safety in the *FY 2022 – 2026 EPA Strategic Plan*.

In FY 2023, EPA will conduct technical analyses and rulemaking efforts to address issues related to preventing childhood lead poisoning, including reviewing the definition of LBP; revising the dust-lead hazard standards (DLHS), the dust-lead clearance levels (DLCL), and the soil-lead hazard standards (SLHS); and continuing work to identify and subsequently address LBP hazards identified in public and commercial buildings. As a result of a May 2021 decision by the U.S. Court of Appeals for the Ninth Circuit, the DLHS, the definition of LBP, and the DLCL regulations have been identified by the Administration as rules to reconsider.³¹² FY 2023 funding will enable EPA to propose revisions to the DLHS and DLCL, while conducting activities necessary to revisit the definition of LBP and SLHS. In addition, EPA must continue work to evaluate whether hazards are created from renovations of public and commercial buildings (P&CBs). Reconsideration and development of these rulemakings will help ensure the most protective approaches are taken to reduce lead exposure in homes and child-occupied facilities, with benefits for overburdened and underserved communities where disproportionate impacts occur from LBP in support of the Administration's goals to enhance EJ and equity.

Renovation, Repair and Painting Program

In FY 2023, EPA will continue to implement the Renovation, Repair and Painting (RRP) Rule to address lead hazards created by renovation, repair, and painting activities in homes and child-occupied facilities³¹³ and to advance EPA's EJ goals. Fourteen states and one tribe have been authorized to administer this program and rule. In the remaining non-authorized states, tribes, and territories, EPA will continue to accredit training providers, track training class notifications, and certify renovation firms. EPA also will assist in the development and review of state and tribal applications for authorization to administer training and certification programs, provide information to renovators and homeowners, provide oversight and guidance to all authorized programs, and disseminate model training courses for lead-safe work practices. As of January

³¹⁰ Among children ages 1 to 5 years in families with incomes below poverty level, the 95th percentile blood lead level (BLL) was 3.0 µg/dL, and among those in families at or above the poverty level, it was 2.1 µg/dL, a difference that was statistically significant. The 95th percentile BLL among all children ages 1 to 5 years was 2.5 µg/dL. The 95th percentile BLL in Black non-Hispanic children ages 1 to 5 years was 3.0 µg/dL, compared with 2.4 µg/dL for White non-Hispanic children, 1.8 µg/dL for Mexican-American children, and 2.7 µg/dL for children of "All Other Races/Ethnicities." The differences in 95th percentile BLL between race/ethnicity groups were all statistically significant, after accounting for differences by age, sex, and income. See *America's Children and the Environment* (EPA, 2019), found at: <https://www.epa.gov/americaschildrenenvironment>.

³¹¹ Draft Strategy to Reduce Lead Exposures and Disparities in U.S. Communities (EPA, 2021) found at <https://www.epa.gov/system/files?file=documents/2021-11/updated-public-comment-draft-lead-strategy-11-16-2021.pdf>.

³¹² For additional information, please visit: <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/05/14/19-71930.pdf>.

³¹³ For additional information, please visit: <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program>.

2022, there were 308 accredited RRP training providers and more than 55,000 certified renovation firms. In FY 2021, about 33 percent of renovation firms with expiring certifications were recertified before their certifications expired.

DLHS, Definition of LBP, DLCL, and Public and Commercial Buildings (P&CBs)

In FY 2023, as noted above, EPA will review the DLHS/LBP and DLCL rules and continue analytical work to support the P&CB rule. These regulations, which reduce lead exposure, can aid in addressing historic and persistent disproportional vulnerabilities of certain racial, low-income, and overburdened and underserved communities, and can play an important role toward achieving the Administration's goals to enhance EJ and equity. The DLHS defines hazardous levels of lead in residential paint, dust, and soil, and post abatement clearance levels for lead in interior house dust.

In FY 2019, EPA revised the DLHS.³¹⁴ EPA also finalized its 2018 proposal to make no change to the definition of LBP. On January 7, 2021, the final DLCL rule reduced the amount of lead that can remain in dust on floors and windowsills after lead removal activities to better protect children from the harmful effects of lead exposure from 40 to 10 $\mu\text{g}/\text{ft}^2$ on floors, and 250 to 100 $\mu\text{g}/\text{ft}^2$ on windowsills. In accordance with the EO 13990 and consistent with a May 2021 court decision in the Ninth Circuit,³¹⁵ EPA has initiated a rulemaking to reconsider the DLHS and DLCL. Additionally, in light of a May 2021 court decision, EPA will revise the 2001 soil-lead hazard standards and revisit the definition of lead-based paint. The definition of lead-based paint is incorporated throughout the lead-based paint regulations, and application of this definition is central to how the lead-based paint program functions. EPA will, in collaboration with the Department of Housing and Urban Development (HUD), revisit the definition of LBP and, as appropriate, revise the definition to make it more protective. EPA is currently evaluating how best to move forward on this issue.

In FY 2023, EPA will continue to evaluate risk from renovations of public and commercial buildings pursuant to TSCA §402(c)(3), which directs EPA to promulgate regulations for renovations in target housing, public buildings built before 1978, and commercial buildings that create lead-based paint hazards. EPA will determine whether such renovations create LBP hazards and, if they do, EPA will address those hazards by promulgating work practice, training, and certification requirements for public and commercial buildings. Low-income, minority children are disproportionately vulnerable to lead exposure and therefore these efforts, as well as others that focus on reducing environmental lead levels, have the potential to create significant EJ gains.

Lead-Based Paint (LBP) Activities

In FY 2023, EPA will continue to implement the LBP Activities (Abatement, Risk Assessment, and Inspection) Rule by administering the federal program to review and certify firms and individuals and to accredit training providers. Ensuring that those who undertake LBP Activities are properly trained and certified is a critical aspect of federal efforts to reduce lead exposure and work towards addressing the historic and persistent disproportional vulnerabilities of certain racial, low-income, and overburdened and underserved communities. Additionally, the Agency will

³¹⁴ For details on the revised rule, please visit: <https://www.federalregister.gov/documents/2021/01/07/2020-28565/review-of-dust-lead-post-abatement-clearance-levels>.

³¹⁵ For additional information, please visit: <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/05/14/19-71930.pdf>.

continue to review and process requests by states, territories, and tribes for authorization to administer the lead abatement program *in lieu* of the federal program. Thirty-nine states, four tribes, the District of Columbia, and Puerto Rico have been authorized to run the LBP abatement program.

Education and Outreach

In FY 2023 the Agency will continue to provide education and outreach to the public on the hazards of LBP, emphasizing compliance assistance and outreach to support implementation of the RRP rule and to increase public awareness about preventing childhood lead poisoning. The Program will continue to focus on reducing harm in communities disproportionately affected by lead exposure, including a focus on low income, overburdened, underserved, and tribal communities, and providing community leaders a means to educate their own communities about lead hazards and the importance of lead poisoning prevention. Finally, EPA will continue to provide support to the National Lead Information Center (NLIC) to disseminate information to the public.³¹⁶

Performance Measure Targets:

(PM RRP30) Percentage of lead-based paint RRP firms whose certifications are scheduled to expire that are recertified before the expiration date.	FY 2022 Target	FY 2023 Target
	32	33

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$620.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.

Statutory Authority:

Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.* – Sections 401-412.

³¹⁶ For additional information, please visit: <https://www.epa.gov/lead/forms/lead-hotline-national-lead-information-center>.

Underground Storage Tanks (LUST/UST)

LUST / UST

Program Area: Underground Storage Tanks (LUST / UST)

Goal: Safeguard and Revitalize Communities

Objective(s): Reduce Waste and Prevent Environmental Contamination

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$10,373</i>	<i>\$11,250</i>	<i>\$12,564</i>	<i>\$1,314</i>
Leaking Underground Storage Tanks	\$9,561	\$9,470	\$9,811	\$341
Total Budget Authority	\$19,931	\$20,720	\$22,375	\$1,655
Total Workyears	88.1	91.6	95.6	4.0

Program Project Description:

Environmental Program Management (EPM) resources fund EPA's work in the Leaking Underground Storage Tank (LUST)/UST Program to help prevent releases of petroleum through activities such as inspection and compliance assistance support. The EPM LUST/UST Program provides states³¹⁷ and tribes with technical assistance and guidance, and by directly funding projects that assist states and tribes in their program implementation, such as the Tribal Underground Storage Tanks Database (TrUSTD). EPA is the primary implementer of the UST Program in Indian Country. With few exceptions, tribes do not have independent UST program resources. EPA will provide facility-specific compliance assistance for UST facility owners and operators in communities with environmental justice concerns in Indian country.

This program supports the Administration's priority of mitigating the negative environmental impacts to communities that are historically underserved, marginalized, and adversely affected by persistent poverty and inequality, as articulated in Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.³¹⁸ As of July 2021, approximately 53 million people lived within a quarter mile of an active UST facility, representing 16 percent of the total U.S population. These communities tend to be more minority and lower income than the U.S. population as a whole.³¹⁹

In 2005, Congress passed the Energy Policy Act (EPAAct) which, along with other release prevention measures, requires states to inspect facilities at least once every three years. EPA has

³¹⁷ States as referenced here also include the District of Columbia and five territories as described in the definition of state in the Solid Waste Disposal Act.

³¹⁸ For more information, please refer to: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

³¹⁹ U.S. EPA, Office of Land and Emergency Management 2021. Data collected includes: (1) UST information as of late-2018 to mid-2019 depending on the state from ORD & OUST, UST Map, <https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=b03763d3f2754461adf86f121345d7bc>; and (2) population data from the 2015-2019 American Community Survey.

been supporting states in these efforts. Between 2008 and 2021, the number of annual confirmed releases has decreased by 33 percent (from 7,364 to 4,991).³²⁰

A recent EPA study suggests that increased UST compliance is a result of increasing inspection frequency. EPA's statistical analysis, using the State of Louisiana's and Arkansas's UST data, showed a positive and statistically significant effect of increased inspection frequency on facility compliance.³²¹ This evidence supports the data trends the Agency witnessed: compliance rates rose notably after fully implementing the three-year inspection requirement.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 6/Objective 6.2, Reduce Waste and Prevent Environmental Contamination in the *FY 2022 - 2026 EPA Strategic Plan*.

EPA estimates that only 2 percent of the Nation's 125,000 retail fuel locations have the appropriate equipment to store higher blends of ethanol, which means that the remaining UST systems will need some level of upgrade before they can safely and legally store E15. This poses a greater risk of having an accidental fuel release in nearby communities. To help address this, EPA is requesting additional resources to establish a targeted, national program to improve the compatibility of UST systems with E15 in fenceline communities where E15 is more prevalently used.

Requested resources will be used to:

- Conduct outreach and education to UST owners to ensure they both understand the regulatory requirements to store E15 and the technical process they can use to determine their compatibility in complying with those requirements so they can safely store E15; and
- Hire staff to support state inspection programs and to conduct direct E15 compliance inspections in Indian Country.

This investment is one part of a collective plan to support the use of E15, while protecting the surrounding communities and compliments investments being proposed in LUST Prevention and Research: Sustainable and Healthy Communities.

In FY 2023, EPA will continue to engage in the following core activities:

- Support enhanced inspections and evaluations for UST owners/operators to ensure that UST systems meet current regulations. This will include expanded development and use of a facility specific compliance assistance application for use in Indian Country.
- Develop tools and resources to assist states in adapting to the impacts of climate change and extreme weather events. This includes developing tools and resources to assist states in identifying facilities that are more prone to flooding or wildfires and helping these facilities prepare for these events before they occur.

³²⁰ For more information, please refer to <https://www.epa.gov/system/files/documents/2021-11/ca-21-34.pdf>.

³²¹ Sullivan, K. A.; Kafle, A (2020). *The Energy Policy Act of 2005: Increased Inspection Frequency and Compliance at Underground Storage Tank Facilities*. OCPA Working Paper No. 2020-01.

- Provide oversight for state LUST prevention grants and provide compatibility compliance assistance for tribal facilities.
- Continue research studies that identify the compatibility of new fuel formulations with current tank systems.
- Continue to coordinate with state UST prevention programs.
- Provide technical assistance, compliance help, and expert consultation to state, tribal, and stakeholders on both policy and technical matters. This support strives to strengthen the network of federal, state, tribal, and local partners (specifically communities and people living and working near UST sites) and assists implementation of the UST regulations.
- Provide guidance, training, and assistance to the regulated community to improve understanding and compliance.
- Continue to work with industry, states, and tribes to identify causes and potential solutions for corrosion in diesel tanks. Work in this area is important given the significant findings regarding the increasing prevalence of corrosion of UST system equipment containing ethanol or diesel fuels.³²²

EPA will continue to collect data regarding both the compliance rate and the number of new releases for UST systems in Indian Country. The compliance rate will help determine progress toward meeting EPA's revised regulations and help identify any areas that need specific attention. In addition, EPA will continue its work to evaluate the effectiveness of its 2015 regulations, which are designed to ensure existing UST equipment continues to function properly.

Performance Measure Targets:

Work under this program supports performance results in the LUST Prevention Program under the LUST appropriation.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$344.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$970.0 / +4.0 FTE) This program change requests additional FTE to support the new fenceline communities program and to conduct direct E15 compliance inspections in Indian Country. Resources also will be used for the development and coordination of outreach materials to the regulated community. This investment includes \$705.0 thousand in payroll.

³²² For more information, please refer to: www.epa.gov/ust/emerging-fuels-and-underground-storage-tanks-usts#tab-3.

Statutory Authority:

Resource Conservation and Recovery Act §§ 8001, 9001-9011.

Water Ecosystems

National Estuary Program / Coastal Waterways

Program Area: Protecting Estuaries and Wetlands

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	\$29,496	\$31,822	\$32,184	\$362
Total Budget Authority	\$29,496	\$31,822	\$32,184	\$362
Total Workyears	35.5	36.9	36.9	0.0

Program Project Description:

The National Estuary Program (NEP)/Coastal Waterways Programs work to restore the physical, chemical, and biological integrity of estuaries of national significance and coastal watersheds by protecting and restoring water quality, habitat, and living resources.³²³

The Nation's coasts are facing devastating ecological and societal stress now, and communities with environmental justice concerns, especially people of color, low-income, and Indigenous communities, are experiencing disproportionate climate impacts. Sea level rise and shoreline loss, dead zones, harmful algal blooms, coral bleaching, coastal acidification, wetland and habitat loss, shifts in species composition and habitat, frequent flooding, degraded water quality, and billion-dollar storms are becoming routine. The water quality and ecological integrity of estuarine and coastal areas is critical to the economic vitality of the U.S. While the estuarine regions of the U.S. comprise just 12.6 percent of U.S. land area, they contain 43 percent of the U.S. population and provide 49 percent of all U.S. economic output.³²⁴ The economic value of coastal recreation in the U.S. – for beach going, fishing, bird watching, and snorkeling/diving – has been conservatively estimated by the National Oceanic and Atmospheric Administration to be in the order of \$20 billion to \$60 billion annually.³²⁵ Wetlands also protect coastal property by absorbing storms, floods, and high waves. They stabilize shorelines and prevent land from eroding. The storm damage services provided by wetlands are valued at over \$23 billion dollars annually.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will provide \$19.6 million in Clean Water Act Section 320 grants for 28 NEPs (\$700 thousand per NEP). This is a highly leveraged program with projects that address coastal,

³²³ For more information, please visit <https://www.epa.gov/nep>.

³²⁴ For more information, please visit <https://www.fisheries.noaa.gov/national/habitat-conservation/estuary-habitat>.

³²⁵ For more information, please visit <https://www.fisheries.noaa.gov/national/habitat-conservation/coastal-wetlands-too-valuable-lose>.

estuarine, and inland freshwater ecosystem needs. On average, NEPs leverage over \$20 for every dollar provided by EPA. This funding will strengthen EPA's staff and internal resource capacity to support and manage core NEP programmatic activities, including the implementation of the NEP Comprehensive Conservation and Management Plans, addressing findings from regular program evaluations of individual NEPs, oversight of the day-to-day operations of the NEPs, and management of Clean Water Act Section 320 grant funds. The FY 2023 funding will provide capacity to support NEP programs that address priority issues such as nutrient management, habitat protection and restoration, water quality, and climate adaptation and resiliency. In addressing climate issues, NEPs will assess climate change vulnerabilities, develop and implement adaptation and resiliency strategies, engage and educate stakeholders, and implement collaborative projects with regional, state, and local partners. Funding also will support the NEPs in developing the skills and capacity to integrate environmental and climate justice into their guiding documents and daily operations. The FY 2023 request includes \$2 million for the NEP Coastal Watersheds Grant program. FY 2023 funding will be used to reinvigorate the Climate Ready Estuaries (CRE) program³²⁶ and other important coastal program activities. CRE provides technical support to NEPs and other coastal community leaders and advises on climate resiliency nationally. EPA also will continue to work with other federal agencies, states, and tribes to assess ocean and coastal acidification and identify opportunities to implement actions to mitigate the effects of acidification.

EPA continues to work with states, tribes, trust territories, NEPs, and other Federal agencies to implement the National Aquatic Resource Survey (NARS) in coastal/estuarine waters. In FY 2022, the NARS coastal survey will complete processing of samples collected during FY 2021 and provide validated sample results to partners. Analysis and interpretation of the sample results will be used for the next National Coastal Condition Report targeted for publication in FY 2023.

EPA, as the federal chair of the Gulf Hypoxia Task Force, will work with other task force member federal agencies and twelve member states to continue implementation of the 2008 Gulf Hypoxia Action Plan. This activity complements other coordination and implementation resources in the Geographic Program: Gulf of Mexico and Surface Water Protection Program. A key goal of the Gulf Hypoxia Action Plan is to improve water quality in the Mississippi River Basin and reduce the size of the hypoxic zone in the Gulf of Mexico by implementing existing and innovative approaches to reduce nitrogen and phosphorus pollution in the Basin and the Gulf. Hypoxia Task Force member states are implementing their nutrient reduction strategies, partnering with land grant universities, reporting on measures to track progress, and identifying a need for adaptive management., while the Task Force is developing basin-wide metrics. Excessive nutrients can have both ecological and human health effects. For example, high nitrate levels in drinking water have been linked to serious illness.³²⁷ In addition to the public health risks, there are considerable economic costs from impaired drinking water. State support for effective nutrient reduction in the

³²⁶ For more information, please visit: <https://www.epa.gov/cre>.

³²⁷ For more information, please visit:

<https://nepis.epa.gov/Exe/ZyNET.exe/P100U1TD.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&DocS=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C06thru10%5CCTxt%5C00000039%5CP100U1TD.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>.

Gulf will be coordinated with other Hypoxia Task Force federal member agencies, such as the U.S. Department of Agriculture and U.S. Geological Survey, in high-priority watersheds.

Performance Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$296.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$66.0) This program change is an increase of resources to support the restoration of the water quality and ecological integrity of estuaries of national significance.

Statutory Authority:

2021 Protect and Restore America's Estuaries Act; 1990 Great Lakes Critical Programs Act of the Clean Water Act; Great Lakes Legacy Reauthorization Act of 2008; Clean Water Act Section 320; Estuaries and Clean Waters Act of 2000; Protection and Restoration Act of 1990; North American Wetlands Conservation Act; Water Resources Development Act; 2012 Great Lakes Water Quality Agreement; 1987 Montreal Protocol on Ozone Depleting Substances; 1909 Boundary Waters Treaty.

Wetlands

Program Area: Protecting Estuaries and Wetlands

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$18,562</i>	<i>\$19,300</i>	<i>\$25,637</i>	<i>\$6,337</i>
Total Budget Authority	\$18,562	\$19,300	\$25,637	\$6,337

Program Project Description:

EPA's Wetlands Protection Program has two primary components: 1) the Clean Water Act (CWA) Section 404 regulatory program and 2) the state and the tribal wetland development program. Major activities of the Wetlands Protection Program include timely and efficient review of CWA Section 404 permit applications submitted to the United States Army Corps of Engineers (USACE) or authorized states; engaging and partnering with USACE, states, and other stakeholders to develop stream and wetland assessment tools, and improving compensatory mitigation effectiveness and availability of credits; assisting in the development of state and tribal wetlands protection and restoration programs under CWA; and providing technical assistance to the public on wetland management and legal requirements.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*. In FY 2023, EPA is requesting an additional \$6.3 million and 21.6 FTE to build back core capacity to support EPA's state and tribal partners through enhancing their wetlands protection programs.

Working with federal, state, tribal, and local partners, EPA will strive to ensure an effective, consistent approach to wetlands protection, restoration, and permitting. To achieve this goal, the Agency will continue its collaborative relationship with the USACE in the CWA Section 404 permitting program and continue its work with states and tribes to build their wetlands programs to monitor, protect, and restore wetlands to achieve multiple societal benefits, including adapting and mitigating the effects of climate change.

CWA Section 404

Section 404 of the CWA is an established program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. USACE is responsible for managing the day-to-day permit processes nationwide under CWA Section 404.³²⁸ EPA engages in the CWA

³²⁸ Currently three states, Michigan, New Jersey, and Florida have assumed the CWA Section 404 permit program. CWA Section 404(g) gives states and tribes the option of assuming, or taking over, the permitting responsibility and administration of CWA Section 404 permit program for certain waters.

404 permit process to ensure compliance with the CWA Section 404(b)(1) guidelines as the permitting authority formulates their proposed permits. In 2008, EPA and USACE issued a final rule governing compensatory mitigation for activities authorized by the CWA 404 and associated losses of aquatic resources. The current regulation prescribes a review and approval process for the establishment and management of mitigation banks and in-lieu of fees program. EPA and USACE will continue to work together to evaluate the effectiveness of the program, provide training to regulators and the public, and consider further enhancements to the rule and program.

In FY 2023, EPA will support the development of stream and wetland assessment methods, trainings for regulators, and regional crediting protocols for compensatory mitigation to improve the efficiency and environmental outcomes of federal and state agency review. In addition, EPA and USACE will continue improving efficiencies in federal CWA Section 404 permitting that would help reduce potential costs and delays; increasing consistency and predictability; improving protection of public health and the environment, including assessing climate impacts and impacts to disadvantaged communities; and ensuring permit decisions are legally defensible.

EPA also will continue carrying out its responsibilities as a member of the Gulf Coast Ecosystem Restoration Council authorized under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act, and as a Natural Resource Damage Assessment (NRDA) Trustee for the Deepwater Horizon oil spill under the Oil Pollution Act (OPA). Under CWA Section 404, the RESTORE Act, and OPA, EPA's responsibilities include timely, environmentally sound, and compliant implementation of National Environmental Policy Act (NEPA) review and associated permitting. Under NRDA, EPA is a cooperating or lead federal agency for NEPA on all Deepwater Horizon Trustee Implementation Group restoration plans and ensures the appropriate level of NEPA analysis is integrated into those referenced restoration plans. EPA's RESTORE responsibilities include NEPA analysis for projects that the Council assigns to EPA. As a NRDA Trustee, EPA undertakes mandatory independent third-party financial audits every three years to ensure accountability regarding the use of funds provided under a 2016 consent decree.³²⁹ The first independent third-party financial audit was initiated in FY 2018 and concluded in FY 2020 with no negative findings. The second audit is underway and will conclude in FY 2022.

Building State and Tribal Wetlands Programs

EPA will continue to work with states and tribes to target Wetlands Protection Program funds to core statutory requirements while providing states and tribes flexibility to best address their priorities. This includes providing assistance to states and tribes interested in assuming administration of the CWA Section 404 program. EPA intends to propose a rule in FY 2023 to update the existing assumption regulations and provide greater clarity to state and tribes on what waters may be assumed. The Agency anticipates taking final action in FY 2024. EPA also will continue to administer Wetlands Program Development grants in support of state and tribal wetlands programs. The Agency will focus on working more efficiently with states and tribes to achieve specific program development outcomes including protecting and restoring wetlands to address climate impacts and supporting state and tribal assumption of the CWA Section 404 program.³³⁰

³²⁹ For more information, please see: <https://www.epa.gov/sites/production/files/2016-02/documents/deepwaterhorizon-cd.pdf>.

³³⁰ For more information, please see: <https://www.epa.gov/wetlands>.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$864.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$5,473.0 / +21.6 FTE) This program change is an increase of resources and FTE to support the implementation of the Clean Water Act to protect and restore wetlands. This investment includes \$3.569 million in payroll.

Statutory Authority:

CWA § 404.

Water: Human Health Protection

Beach / Fish Programs

Program Area: Ensure Safe Water

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$1,146</i>	<i>\$1,584</i>	<i>\$1,827</i>	<i>\$243</i>
Total Budget Authority	\$1,146	\$1,584	\$1,827	\$243
Total Workyears	1.7	3.2	3.8	0.6

Program Project Description:

The Beach/Fish Program provides up-to-date science, guidance, technical assistance, and nationwide information to state, tribal, and federal agencies to protect human health of beach goers from contaminated recreation waters, as well as recreational and subsistence fishers (*e.g.*, tribal communities and other underserved populations) from consumption of contaminated fish.

The Agency implements the following activities under this program:

- Develop and disseminate methodologies and guidance that states and tribes use to sample, analyze, and assess fish tissue in support of waterbody specific or regional consumption advisories.
- Develop and disseminate guidance that states and tribes can use to conduct local fish consumption surveys.
- Develop and disseminate guidance that states and tribes can use to communicate the risks of consuming chemically contaminated fish.
- Gather, analyze, and disseminate information to the public and health professionals that informs decisions on when and where to fish, and how to prepare fish caught for recreation and subsistence.
- Provide best practices on public notification of beach closures and advisories.
- Develop tools such as the sanitary survey app, predictive modeling, and improved analytical methods.
- Maintain the E-Beaches IT system to collect data required by the BEACH Act.

In addition to providing technical support to states and tribes on beach monitoring and data reporting, these programs are part of EPA's ongoing effort to increase public awareness of the risks to human health associated with contact with recreational water contaminated with pathogens and Harmful Algal Blooms and with eating locally caught fish with pollutants such as mercury, PCBs, or PFAS, at levels of concern. These efforts are directly linked to the Agency's mission to protect human health.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, EPA will continue to:

- Update science and public policy to assess and manage the risks and benefits of fish consumption.
- Provide analytical tools and collect data associated with beach monitoring.
- Provide technical support to states in the operation of their fish consumption advisories and beach monitoring programs, including revision of recommended target analytes per the Agency's PFAS Roadmap.
- Build program capacity, particularly in areas related to environmental justice, water infrastructure support and oversight, climate change resilience, and regulatory reviews.
- Per the Agency's PFAS Roadmap, complete human biomarker report on PFAS in blood serum and relationship with consumption of fish.
- Per the Agency's PFAS Roadmap, conduct analysis and data reporting for contaminants including PFAS for the first time in a national lake study, as a human health indicator.

In FY 2023, EPA also will make investments in providing up-to-date science, guidance, and technical assistance so states and tribes have equitable and effective beach and fish advisory programs. This allows the public, including underserved communities, to make informed choices about recreational activities in local waters and eating locally caught fish. EPA will upgrade the E-Beaches IT system.

Performance Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$30.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$213.0 / +0.6 FTE) This program change is an increase of resources and FTE to build program capacity, particularly in areas related to environmental justice, water infrastructure support and oversight, climate change resilience, and regulatory reviews. This investment includes \$115.0 thousand in payroll.

Statutory Authority:

Clean Water Act, § 101, 104, and 303.

Drinking Water Programs

Program Area: Ensure Safe Water

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Ensure Safe Drinking Water and Reliable Water Infrastructure

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$97,190</i>	<i>\$106,903</i>	<i>\$133,258</i>	<i>\$26,355</i>
Science & Technology	\$4,088	\$4,364	\$6,776	\$2,412
Total Budget Authority	\$101,278	\$111,267	\$140,034	\$28,767
Total Workyears	480.3	475.2	547.2	72.0

Program Project Description:

Safe drinking water is critical for protecting human health and the economic vitality of the Nation. Approximately 320 million Americans rely on public water systems to deliver safe tap water that complies with national drinking water standards.³³¹ EPA's Drinking Water Program is based on a multiple-barrier and source-to-tap approach to protect public health from contaminants in drinking water.³³² EPA protects public health through:

- Source water assessment and protection;
- Promulgation of new or revised National Primary Drinking Water Regulations (NPDWRs);
- Training, technical assistance, and financial assistance programs to enhance public water system capacity to comply with regulations and provide safe drinking water;
- Underground injection control (UIC) programs;
- Support for implementation of NPDWRs by state and tribal drinking water programs through regulatory, non-regulatory, and voluntary programs and policies; and
- Resources and tools for states and tribes to support the financing of water infrastructure improvements, that are more resilient to threats, human threats like cyber-attacks and natural hazards such as climate change.³³³

Current events, including the detection of lead and per- and polyfluoroalkyl substances (PFAS) in drinking water, highlight the importance of drinking water protection programs that safeguard public health. It is particularly important to prioritize threats and protect the sources of drinking water from those threats. Moreover, the detection of lead and PFAS, such as perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), and GenX chemicals, exemplifies the increased demand for risk communication and other resources that can help communities protect public health and address these chemicals.

³³¹ For more information on the U.S. Environmental Protection Agency Safe Drinking Water Information System (SDWIS/FED), please see: <http://water.epa.gov/scitech/datait/databases/drink/sdwisfed/index.cfm>.

³³² For more information, please see: https://www.epa.gov/sites/production/files/2015-10/documents/guide_swppocket_2002_updated.pdf.

³³³ For more information, please see: <https://www.epa.gov/ground-water-and-drinking-water>.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.1, Ensure Safe Drinking Water and Reliable Water Infrastructure in the *FY 2022 - 2026 EPA Strategic Plan*.

In FY 2023, the program will support the Agency's national drinking water priorities and implementation of the Infrastructure Investment and Jobs Act of 2021(IIJA), including:

- addressing lead and emerging contaminants such as PFAS;
- improving resilience in drinking water systems, to address natural hazards, including climate change, and human threats by enhancing cybersecurity; and,
- improving drinking water and water quality across the Nation, especially in rural, small, underserved, and disadvantaged communities across the country.

In FY 2023, EPA's requested additional resources will support the development and/or implementation of regulatory activities, including:

- developing the new regulation, Lead and Copper Rule Improvements;
- promulgating a PFAS drinking water rule, including public outreach activities; and,
- conducting PFAS monitoring under the fifth cycle of the Unregulated Contaminant Monitoring Rule (UCMR), consistent with EPA's PFAS Strategic Roadmap.

Collectively, additional resources for these efforts will support community engagement activities and help local communities ensure their residents have access to safe drinking water.

The Agency will continue to improve the effectiveness and efficiency of its programs for states and tribes, including work to ensure EPA water programs and resources reach communities that too often have been left behind, including rural and tribal communities. The Drinking Water Program supports this effort by providing training and assistance to state drinking water programs, tribal drinking water officials, and technical assistance providers. The training includes:

- achieving and maintaining compliance at drinking water systems;
- developing and amplifying best practices;
- strengthening state and tribal program capacity; and,
- certifying drinking water operators and maintaining an essential workforce.

The Agency will continue to provide funding to states to assist underserved, small and disadvantaged communities with Safe Drinking Water Act (SDWA) compliance, and providing households access to drinking water services and household water quality testing, including unregulated contaminants.

EPA is overseeing state drinking water programs by completing the annual public water system supervision program review for each primacy agency as required under SDWA. The Agency is also continuing to modernize the Safe Drinking Water Information System for states (SDWIS-State). Information gained during the program reviews, which occur throughout the year, includes an analysis of the completion of sanitary surveys by the primacy agency and an evaluation of whether the primacy agency is implementing its programs in accordance with SDWA. The annual program reviews directly support the work of the states and the Agency to reduce the number of community water systems still in noncompliance with health-based standards. As of January 2022,

more than 2,880 systems have returned to compliance since 2017. EPA continues to work with states towards long-term remediation of health-based system violations. The information gained from the reviews and the SDWIS modernization efforts also support evidence-building activities as part of EPA's implementation of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act). The Agency also continues to work with states on:

- maintaining their capacity development programs and providing resources and tools to assist water systems with SDWA compliance;
- effectively coordinating with Public Water System Supervision (PWSS) programs; and,
- providing operator certification programs to support the water sector workforce.

Water Infrastructure

Infrastructure investment is essential as the Nation's aging infrastructure poses a significant challenge for the drinking water and wastewater sectors to protect public health and the environment. These challenges are particularly pressing in small, rural, overburdened, and underserved communities. In FY 2023, EPA will continue to support funding of the Nation's drinking water infrastructure, including infrastructure needs and assistance for disadvantaged and tribal communities. The Agency also will support activities to leverage and encourage public and private collaborative efforts and investments. This Program also supports the Agency's efforts in implementing the IIJA. EPA will focus on helping disadvantaged communities access the funding provided by IIJA.

EPA will continue to work on the seventh Drinking Water Infrastructure Needs Survey, which EPA expects to release in early 2023. This survey provides a 20-year capital investment need for public water systems that are eligible to receive funding from state Drinking Water State Revolving Fund (DWSRF) programs. The survey also informs the DWSRF allocation formula as required under SDWA.

In addition to the DWSRF Program, in FY 2023 EPA will continue to support drinking water infrastructure programs by implementing the following statutes:

- the Drinking Water and Wastewater Infrastructure Act of 2021 (DWWIA) within IIJA;
- Water Infrastructure Improvements for the Nation Act of 2016 (WIIN);
- America's Water Infrastructure Act of 2018 (AWIA); and,
- The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA).

Collectively, these laws strengthened existing programs and created new ones to tackle significant public health concerns and environmental needs. The programs created in these laws are vital to protecting public health, continuing to grow the United States' economy, and ensuring that rural and urban communities from coast-to-coast can thrive. EPA will continue to provide WIIN, AWIA, and IIJA grant funding for drinking water lead reduction projects and to enhance water system resiliency to natural hazards such as climate change and man-made threats such as cybersecurity, with a focus on small and disadvantaged communities.

Funding for infrastructure supports EPA's goal to increase the cumulative amount of non-federal dollars leveraged by water infrastructure finance programs by \$9 billion in FY 2023. These water infrastructure finance programs include the Clean Water State Revolving Fund, DWSRF, and the WIFIA program. Over \$22.3 billion has been leveraged in FY 2020 and FY 2021.

Drinking Water Program Implementation

In FY 2023, the Agency will continue to work with states to implement requirements for all NPDWRs to ensure that systems install, operate, and maintain appropriate levels of treatment and effectively manage their drinking water plants and distribution systems. The program activities are designed to improve drinking water and water quality across the Nation, especially in tribal and underserved and vulnerable communities. Activities include:

- Working with states to provide training and resources to replace lead service lines and optimize corrosion control treatment, develop other strategies to minimize exposure to lead, and maintain simultaneous compliance;
- Developing guidance, tools, and trainings to support water systems and primacy agencies in implementing the Lead and Copper Rule;
- Developing regulations to improve the clarity, readability, and accuracy of information in Consumer Confidence Reports;
- Developing regulations to implement SDWA Section 1414 requirements allowing states to mandate water system restructuring assessments; and,
- Focusing on the reduction of the number of community water systems with health-based violations, especially small systems, tribal systems, and systems in underserved communities.

EPA will continue the development of modernized SDWIS-State and support state migration to the Compliance Monitoring Data Portal, which enables drinking water utilities and laboratories to report drinking water data electronically. In addition, EPA will continue the development of efficient program data management and reporting tools focusing on drinking water regulation, system technical, managerial, and financial capacity, and activities that inform status of SDWA compliance and decisions to support human health protection.

In FY 2023, EPA will conduct the following activities to facilitate compliance with drinking water rules:

- Overseeing the national PWSS Program by administering grants to states and measuring program results based on state reporting of health-based rule violations at public water systems for over 90 drinking water contaminants;
- Offering training and technical assistance to states, tribes, and public water systems, especially those in underserved and disadvantaged communities, with a priority on addressing significant noncompliance with the NPDWRs;
- Bolstering its strong partnership with the states to provide small system technical assistance, especially in disadvantaged communities, with a focus on compliance with rules, operational efficiencies, and system sustainability to ensure public health protection;
- Directly implementing the Aircraft Drinking Water Rule, designed to protect millions of people who travel on approximately 5,700 aircraft in the United States annually; and,
- Directly implementing the Drinking Water Program where states and tribes do not have primacy (e.g., Wyoming, the District of Columbia, and tribal lands excluding the Navajo Nation).

In FY 2023, EPA is requesting an additional \$185,000 and 1 FTE to augment its efforts to implement the Evidence Act. This Administration is committed to making evidence-based decisions guided by the best available science and data. These resources will help develop statistical evidence where it is lacking and improve EPA's capacity to generate and share science and data, and use it in policy, budget, operational, regulatory, and management processes and decisions. Specifically, the Agency will be conducting evidence-building activities and gathering information from SDWIS and the Compliance Monitoring Data Portal that inform the data quality of the Agency's drinking water compliance information. EPA will pilot a compliance verification tool to directly analyze state compliance data and compare it to reported violations. Through these efforts, EPA expects to identify additional data needs, potential sources of additional information, and mechanisms to fill data gaps. EPA also will identify system characteristics that support compliance and those that cause compliance challenges. EPA will use these findings to inform and develop policy instruments.

Drinking Water Standards

To assure the American people that their water is safe to drink, EPA's drinking water regulatory program monitors for a broad array of contaminants, evaluates whether contaminants are a public health concern, and regulates contaminants when there is a meaningful opportunity for health risk reduction for persons served by public water systems. In FY 2023, the Agency also will address drinking water risks with the following actions:

- Continuing to develop the new regulation, Lead and Copper Rule Improvements (LCRI), announced by EPA on December 16, 2021, to better protect communities from exposure to lead in drinking water. In FY 2021, EPA announced the delay of the effective date of the Lead and Copper Rule Revisions (LCRR) until December 16, 2021, and the compliance date to October 16, 2024. The delay in the effective date is consistent with presidential directives issued on January 20, 2021, to the heads of federal agencies to review certain regulations, including the LCRR (Executive Order 13990).³³⁴ Following the Agency's review of the LCRR under Executive Order 13990, EPA concluded that the rule should go into effect because it provides improved protections of public health. EPA also concluded there are significant opportunities to improve the rule to support the overarching goal of proactively removing lead service lines and more equitably protecting public health.
- Conducting human health effects assessments for water contaminants to support SDWA actions, including the derivation of maximum contaminant level goals, drinking water health advisories, and human health benchmarks. Consideration of those potentially most at risk – especially sensitive subpopulations and critical life stages (e.g., infants and children) – is key in development of health effects assessments for contaminants in water.
- After a thorough review in accordance with the Administration's executive orders and other directives, EPA reissued the final regulatory determination to regulate PFOA and PFOS in drinking water on February 22, 2021 without substantive change. In FY 2021, EPA began the process to establish enforceable limits for two PFAS chemicals, PFOA and PFOS, under SDWA. EPA intends to propose NPDWRs for PFOA and PFOS in FY 2023, supported by: health effects assessments/science; external consultations; peer reviews. and

³³⁴ For additional information, please see: <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>

other work being undertaken in FY 2022. EPA also will begin to respond to public comments; conduct additional analyses (if needed) in response to public comments; conduct stakeholder engagement activities; and revise support documents and draft the final regulation.

- After the expected completion of the final fifth Contaminant Candidate List (CCL 5) in FY 2022, EPA will begin developing the SDWA-mandated draft Regulatory Determinations for the CCL 5.
- Continuing to participate in interagency actions and support cross-agency efforts to address PFAS; better understand the health impacts and extent of their occurrence in the environment and resulting human exposures; and support priorities identified by the EPA Council on PFAS.
- Developing drinking water health advisories for PFAS with final toxicity values, including GenX chemicals and PFBS (anticipated in Spring 2022), and updated health advisories for PFOA and PFOS as quickly as possible following Science Advisory Board review of the toxicity values.
- Continuing to develop risk communication and other tools to support states, tribes, and localities in managing PFAS and other emerging contaminants in their communities.
- Continuing to conduct analyses in support of the fourth six-year review of existing NPDWRs, utilizing state data for regulated contaminants collected between 2012-2019.
- Continuing to support state and tribal efforts to manage cyanotoxins in drinking water, including providing technical assistance.
- Continuing to conduct technical analyses, develop draft technical support documents and other materials, and form and support a focused National Drinking Water Advisory Council workgroup seeking input and advice to support revisions to the existing Microbial and Disinfection Byproducts Rules.
- Beginning PFAS monitoring under UCMR 5, conducting occurrence analyses, and providing support to drinking water systems and laboratories as they collect and analyze samples during implementation.
- Collecting Community Water System Survey data to capture changes in the conditions of public water systems that have taken place in water systems over the past 16 years.

Source Water Protection

SDWA requires drinking water utilities that meet the definition of a public water system to meet requirements for source water protection set by EPA and state primacy agencies. Protecting source water from contamination helps reduce treatment costs and may avoid or defer the need for complex treatment. EPA will continue to partner with states, federal counterparts, drinking water utilities, and other stakeholders to identify and address current and potential threats to sources of drinking water. In FY 2023, the Agency will be:

- Continuing to develop data-layers and decision support tools to assist source water assessment, planning, and emergency preparation including updates to the Drinking Water Mapping Application for Protecting Source Waters (DWMAPS) on EPA's web-based geospatial platform, *GeoPlatform*.³³⁵

³³⁵ For more information, please see: <https://www.epa.gov/sourcewaterprotection/dwmaps>.

- Working with state, federal, utility, and local stakeholders to leverage resources, support efforts to assist communities in source water protection activities and projects, and promote ongoing efforts to protect drinking water sources.
- Continuing to partner with the Department of Agriculture (USDA)'s Natural Resources Conservation Service and Forest Service, and state partners to support implementation of the source water protection provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill). This presents an opportunity to forge stronger connections between EPA and USDA to address agriculture-related impacts to drinking water sources.
- Continuing to provide support for workshops that promote source water protection at the local level and support the integration of source water protection into related programs at the state and federal levels, focusing on reducing nutrient pollution impacts on drinking water sources.
- Working with stakeholders to implement source water protection provisions mandated by AWIA. EPA will support the implementation of the AWIA revisions to the Emergency Planning and Community Right-to-Know Act as it relates to notification of releases of hazardous chemicals that potentially affect source water. In addition, the Agency will support community water systems having access to hazardous chemical inventory data.
- Continuing to serve as an expert on sources of emerging drinking water contaminants and options for limiting or preventing such contamination through source water protection and integration of SDWA and Clean Water Act (CWA), particularly through development and implementation of ambient water quality criteria for the protection of human health.
- Supporting the development of outreach and training materials on incorporating source water protection into asset management to further the concept that source water protection is an integral part of the overall planning and management of a utility.

Underground Injection Control

Roughly one-third of the United States' population is served by public water systems that receive water from ground water. To safeguard current and future underground sources of drinking water from contamination, the UIC Program regulates the use of injection wells that place fluids underground for storage, disposal, enhanced recovery of oil and gas, and minerals recovery. Protecting ground water requires proper permitting, construction, operation, and closure of injection wells. In FY 2023, activities in the UIC Program include:

- Working with the Ground Water Protection Council, Interstate Oil and Gas Compact Commission, and the National Rural Water Association to identify best practices in oil and gas development, such as reuse and recycling of produced water, that can help safeguard public health.
- Supporting the Administration's efforts to tackle the climate crisis and implementing the Drinking Water and Wastewater Infrastructure Act of 2021 to support comprehensive carbon dioxide infrastructure in the United States, by working with permit applicants on Class VI permits for secure geologic storage of carbon dioxide and with state UIC programs seeking to obtain state primacy for the Class VI program.
- Working with authorized state and tribal agencies in their efforts to effectively manage Class II enhanced oil and gas recovery wells and oil and gas-related disposal wells.
- Supporting states and tribes in applying for primary enforcement responsibility and implementing UIC Program revisions.

- Continuing to provide technical assistance, tools, and strategies to states to improve implementation of UIC programs, including development of e-learning material.
- Using national UIC data to assist with promoting consistent approaches to program oversight of state and EPA's UIC programs.
- Developing tools to support permitting in direct implementation and state implementation of the Class VI program.
- Streamlining EPA's UIC direct implementation permitting process and reducing the permit application backlog.

Water Sector Cybersecurity

Based on recent cyber-attacks on water systems, EPA requests \$400,000 and 2 FTE to administer the new Water Sector Cybersecurity Grant in FY 2023. This new competitive grant will be targeted toward cybersecurity infrastructure needs within the water sector.

Water Reuse

To assure a safe and reliable source of water that is resilient to drought, flooding, and population growth, EPA is working to advance the consideration of water reuse nationwide. This work is being done in collaboration with a broad group of stakeholders including non-governmental organizations, states, tribes, and local governments. In FY 2023, EPA will continue to support the National Water Reuse Action Plan. The Agency will develop and pursue actions that prioritize advancing technical and scientific knowledge on water reuse to ensure its safety across a range of uses and applications. EPA also will pursue actions in the Plan that provide financial tools for stakeholders to ensure the accessibility of water reuse.³³⁶

One Water/One Community

EPA will coordinate CWA and SDWA investments toward historically underserved and overburdened communities that are facing greater climate and water equity challenges to achieve greater resilience, access to clean and safe water, and an improved quality of life. This program will provide holistic support to communities as they respond to the climate crisis by increasing funding for planning and implementation actions across the country. Additionally, EPA will work with tribes to meet the unique needs of their communities.

Performance Measure Targets:

(PM DW-02) Number of community water systems still in noncompliance with health-based standards since March 31, 2021.	FY 2022 Target	FY 2023 Target
	640	590
(PM DWT-02) Number of community water systems in Indian Country still in noncompliance with health-based standards since March 31, 2021.	FY 2022 Target	FY 2023 Target
	100	90
(PM DW-07) Number of drinking water and wastewater systems, tribal and state officials, and water sector partners provided with security, emergency preparedness, and climate resilience training and technical assistance.	FY 2022 Target	FY 2023 Target
	2,000	2,000

³³⁶ For more information, please see <https://www.epa.gov/waterreuse>.

(PM INFRA-06) Number of tribal, small, rural, or underserved communities provided with technical, managerial, or financial assistance to improve system operations.	FY 2022 Target	FY 2023 Target
	339	448

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$3,936.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$10,255.0 / +51.8 FTE) This program change is an increase in resources and FTE to support regulatory analysis, development and training, technical assistance for state, tribal, and local communities to address drinking water contaminants (including Lead and PFAS) in their efforts to ensure safe and affordable drinking water. This increase also supports development of the LCRR and the UCMR. This investment also includes \$9.054 million in payroll.
- (+\$4,843.0 / +7.2 FTE) This program change is an increase in resources and FTE to support coordinated community assistance work in support of the One Water/One Community initiative and the Environmental Finance Centers. This investment also includes \$1.259 million in payroll.
- (+\$5,736.0 / +3.0 FTE) This program change is an increase in resources and FTE to support the implementation of the Agency's *PFAS Action Plan*, including development of the PFAS regulation, UCMR implementation, and the CCL. This investment also includes \$524.0 thousand in payroll.
- (+\$1,000.0 / +2.0 FTE) This program change is an increase in resources and FTE to support the implementation of the Agency's lead action plan including work on the LCRI. This investment also includes \$350.0 thousand in payroll.
- (+\$400.0 / +2.0 FTE) This program change is an increase in resources and FTE to implement the new water sector cybersecurity grant program. This investment also includes \$350.0 thousand in payroll.
- (+\$185.0 / +1.0 FTE) This program change is an increase in resources and FTE to support the activities associated with the Evidence Act. This investment also includes \$175.0 thousand in payroll.

Statutory Authority:

SDWA; CWA.

Water Quality Protection

Marine Pollution

Program Area: Ensure Clean Water

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$8,206</i>	<i>\$9,468</i>	<i>\$12,299</i>	<i>\$2,831</i>
Total Budget Authority	\$8,206	\$9,468	\$12,299	\$2,831
Total Workyears	29.7	31.8	38.0	6.2

Program Project Description:

EPA's Marine Pollution Program: 1) aims to reduce marine litter in our waterways and communities in coastal regions and on major river systems, improve trash capture activities across the country, and supports the Trash Free Waters Program; 2) addresses incidental discharges under the Clean Water Act Section 312; and 3) protects human health and the marine environment from pollution caused by dumping by implementing the Marine Protection, Research and Sanctuaries Act (MPRSA) and supports the Ocean Dumping Management Program.

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*. To support this work, additional resources totaling \$2.8 million and 6.2 FTE are requested in FY 2023 to fund fixed cost increases and build core program capacity.

Trash Free Waters Program. The FY 2023 request includes resources and FTE to support trash capture and prevention programs across the United States tied to water quality and waste management goals and to implement activities under the Save Our Seas 2.0 Act. This program provides support to states and municipalities in coastal regions and on major river systems, with a special focus on lower-income areas with environmental justice concerns.

FY 2023 funding will allow the Program to:

- support the installment of trash capture systems in stormwater conveyance systems and in waterways using technologies that are cost-effective and that have high trash-removal efficiencies;
- provide assistance on integrating trash prevention provisions into municipal stormwater management permits and practices, as well as broader watershed plans;
- aid targeted source reduction efforts;
- promote appropriate protocols for trash monitoring efforts;
- research and address microplastics (including microfibers) in waterways;
- engage in comprehensive outreach and education efforts for trash reduction; and,

- validate and replicate the most effective tools, projects, metrics, and partnerships across the Nation for subsequent application in locations within the United States and in countries with the greatest need.

The Trash Free Waters program has been able to increase the number of place-based projects year by year through active engagement with partners. Since 2013, over 280 Trash Free Water projects have been undertaken with EPA assistance, public education and outreach, research, and regional program planning. EPA will continue to work with its partners to advance this initiative in FY 2023.

Vessels Program. In December 2018, the Vessel Incidental Discharge Act (VIDA) was signed into law establishing a new framework for the regulation of discharges incidental to the normal operation of vessels. EPA is reviewing and considering public comments on the proposed rule to set national performance standards for approximately thirty different categories of discharges from commercial vessels greater than 79 feet in length, and for ballast water from commercial vessels of all sizes. Following finalization of the regulations, EPA will coordinate with the United States Coast Guard on their implementing regulations. In FY 2022, EPA plans to issue revised sewage no-discharge zone guidance for public comment and continue to work with states on designating no-discharge zones within their waters.

Ocean Dumping Management Program. The MPRSA regulates the disposition of any material in the ocean unless expressly excluded under MPRSA. In the United States, the MPRSA implements the requirements of the London Convention. In FY 2023, EPA will evaluate MPRSA permitting requests for the ocean dumping of all materials except dredged materials and, as appropriate, issue MPRSA emergency, research, general, and special permits. This may include addressing MPRSA permitting requests for sub-seabed sequestration of CO₂ in geological formations, ocean-based carbon dioxide removal activities, or ocean-based solar radiation management activities. The U.S. Army Corps of Engineers uses EPA's ocean dumping criteria when evaluating requests for MPRSA permits and MPRSA federal project authorizations for the ocean dumping of dredged material (e.g., to support the expansion of ports and harbors or maintenance of navigation channels). All dredged material MPRSA permits and federal project authorizations are subject to EPA review and written concurrence. In FY 2023, EPA will manage approximately 100 EPA-designated ocean disposal sites, conduct ocean monitoring surveys at approximately six to ten sites, evaluate requests to designate (through rulemaking) new ocean disposal sites and/or modify (i.e., expand the capacity of) existing EPA-designated sites. EPA will maintain national program capacity by training EPA staff and developing technical/regulatory tools to improve MPRSA permitting, site designation, and site management. EPA will provide training for new Chief Scientist candidates and existing Chief Scientists responsible for designing and implementing ocean monitoring surveys. In FY 2023, EPA will serve as the Head of the United States Delegation for the annual London Convention (LC) and London Protocol (LP) Scientific Groups Meetings, Alternate Head of the United States Delegation for the annual Consultative Meeting of the LC and LP Parties, and Chair of the annual LC/LP Consultative Meeting. With the U.S. Army Corps of Engineers, EPA will submit the annual United States Ocean Dumping Report to the International Maritime Organization.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$228.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$2,603.0 / +6.2 FTE) This program change is an increase of resources and FTE to build program capacity, particularly in areas related to environmental justice, water infrastructure support and oversight, climate change resilience, and regulatory reviews. This investment includes \$1.144 million in payroll.

Statutory Authority:

Clean Water Act; Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act); Marine Debris Research, Prevention and Reduction Act of 2006; Marine Plastic Pollution Research and Control Act of 1987; Save Our Seas Act 2.0.

Surface Water Protection

Program Area: Ensure Clean Water

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Protect and Restore Waterbodies and Watersheds

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$197,137</i>	<i>\$206,882</i>	<i>\$239,688</i>	<i>\$32,806</i>
Total Budget Authority	\$197,137	\$206,882	\$239,688	\$32,806
Total Workyears	937.8	944.2	1,020.8	76.6

Program Project Description:

The Surface Water Protection Program, under the Clean Water Act (CWA), directly supports efforts to protect, improve, and restore the quality of our Nation's coasts, rivers, lakes, and streams. EPA works with states and tribes to make continued progress toward clean water goals.

EPA uses a suite of regulatory and non-regulatory programs to protect and improve water quality and ecosystem health in the nation's watersheds. In partnership with other federal agencies, tribes, states, territories, local governments, and non-governmental partners, EPA will work collaboratively with public and private sector stakeholders nationally and locally to establish innovative, location-appropriate programs to achieve the Agency's goals.

This program also supports implementation of water quality standards, effluent guidelines, impaired waters listing, water quality monitoring and assessment, water quality certification, National Pollutant Discharge Elimination System (NPDES) permitting, and management and oversight of the Clean Water State Revolving Fund (CWSRF).

FY 2023 Activities and Performance Plan:

Work in this program directly supports Goal 5/Objective 5.2, Protect and Restore Waterbodies and Watersheds in the *FY 2022 - 2026 EPA Strategic Plan*. Work in this program also directly supports progress toward the Agency Priority Goal: *Clean up contaminated sites and invest in water infrastructure to enhance the livability and economic vitality of overburdened and underserved communities. By September 30, 2023, EPA will provide technical assistance to at least 10 communities to help achieve clean and safe water and reduced exposures to hazardous substances.*³³⁷ Current work is focused on developing a map-based screening tool to assist regions in identifying these communities.

In FY 2023, EPA will work with states and tribes to target funds to core requirements while providing states and tribes with flexibility to best address their priorities for surface water protection. The FY 2023 request will allow EPA to focus on advancement of clean water

³³⁷ This Agency Priority Goal is implemented jointly with Goal 6.

infrastructure programs, with an emphasis on building climate change resilience, conducting CWA regulatory reviews, and advancing environmental justice through technical assistance and stakeholder engagement.

Program Implementation

Water Quality Criteria and Standards. Water quality criteria and standards provide the scientific and regulatory foundation for water quality protection programs under the CWA. EPA will provide new and revised national recommended ambient water quality criteria as required by CWA Section 304. EPA also will be adopting and implementing water quality standards in accordance with 40 CFR part 131. In FY 2023, the Agency will place special emphasis on engaging with underserved communities in the review and setting of state water quality standards. Many underserved communities face contamination of their local waters. This work will help empower these communities to secure adequate water quality standards for their local waters and to drive attainment of those standards through technical assistance and stakeholder engagement. The Agency will place special emphasis on improving the water quality standards in tribal waters on reserved lands and in waterways where tribes retain treaty rights to better ensure that tribes' health and natural resources are protected.

Effluent Limitations Guidelines (ELGs). As required under the CWA, EPA will continue to annually review industrial sources of pollution and publish a preliminary ELG plan for public review, followed by a final biennial ELG plan informed by public comment. These plans will identify any industrial categories where ELGs need to be revised or where new ELGs need to be developed. In FY 2023, EPA intends to increase the capability of EPA's Effluent Guidelines program to reduce industrial pollutant discharges through innovative technology nationwide. These discharges often directly and disproportionately affect underserved downstream communities by contaminating their water sources and fish caught for consumption. The Agency will invest in engaging communities that are so often bearing the brunt of the industrial discharges that are the focus of ELGs, through surface water and fish contamination, drinking water contamination, stress on drinking water treatment systems, and impairment of aquatic ecosystems.

In addition, EPA is initiating a new ELG rulemaking to strengthen wastewater guidelines for power plants that use steam to generate electricity. EPA has decided to implement the 2020 Steam Electric Reconsideration Rule and simultaneously conduct a rulemaking to potentially strengthen the Steam Electric ELGs (40 CFR Part 423) under the Clean Water Act. As part of the rulemaking EPA is committed to meaningful engagement of impacted communities and other stakeholders on potential revisions to the Steam Electric ELGs. Work in FY 2023 will allow EPA to develop the new proposed rule which could lead to additional water pollutant reductions by requiring more stringent pollution control technologies for the waste stream. EPA expects to complete the proposed rule in FY 2023.

Biosolids. EPA will continue to implement the biosolids (sewage sludge) program as required under CWA Section 405, including reviewing the biosolids regulations at least every two years to identify additional toxic pollutants and promulgate regulations for such pollutants consistent with the CWA. EPA also will continue to develop tools to conduct risk assessments for chemicals and pathogens found in biosolids. EPA will focus resources on obtaining and using the latest scientific

knowledge to identify resource recovery and reuse alternatives, understanding and managing the biosolids lifecycle, engaging partners—particularly those communities most affected—and conducting research. Investment in the biosolids program is critical to addressing near term risks from PFAS, dioxins and dibenzofurans, PCBs, and other chemicals known to be in domestic sewage sludge that is currently applied to land.

Impaired Waters Listings and Total Maximum Daily Loads (TMDLs). EPA will work with states and other partners to identify impaired waters, as required by CWA Section 303(d), and on developing TMDLs followed by waterbody restoration plans for listed impaired waterbodies. Climate change is increasing the need for this work as it drives more severe weather events, which in turn may carry higher volumes of pollution into waterways. TMDLs focus on clearly defined environmental goals and establish a pollutant budget, which is then implemented through local, state, and federal watershed plans and programs to restore waters. EPA also will work with states and tribes on their CWA Section 303(d) programs, TMDLs, and other restoration and protection plans to ensure they are effective and can be implemented. EPA will provide support to promote implementation ready TMDLs and the protection of unimpaired or high-quality waters. This program is at an important inflection point as we build on the significant progress implementing the state-EPA collaborative 10-year program vision, “A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program,” announced in December 2013. EPA is now working with states and other partners to develop the vision for the Program for the next 10 years. The announcement of a new long-term program framework is expected by September 2022. As part of developing the new framework, EPA will be evaluating how the Program can best address equity, environmental justice, climate, and tribal considerations.

Monitoring and National Aquatic Resource Surveys (NARS). EPA will continue working with states and tribes to support the National Aquatic Resource Survey’s statistically representative monitoring of the condition of the Nation’s waters which supports CWA Section 305(b). EPA will explore opportunities to leverage NARS data analysis to gain insight on disparities in water quality and the impacts of climate change. EPA will leverage NARS training programs to support workforce development in water quality monitoring and build tribal capacity for monitoring and assessment. EPA also will continue working with states and tribes to support base water quality monitoring programs and priority enhancements that serve state and tribal CWA programs in a cost-efficient and effective manner. EPA will continue supporting state and tribal water quality data exchange and tools to maximize the use of data from multiple organizations to support water quality management decisions.

Waters of the United States. EPA and the Department of the Army published the final Navigable Waters Protection Rule (NWPR) in April 2020. In accordance with Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*,³³⁸ EPA and the Department of the Army completed their review of the NWPR and proposed a new rule on December 7, 2021. The proposal recommends putting back into place the pre-2015 definition of “waters of the United States,” updated to reflect consideration of Supreme Court decisions. This familiar “waters of the United States” approach had been in place for decades and

³³⁸ For more information, please see: <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>

would solidify the rules of the road while the agencies continue to consult with stakeholders to build upon that regulatory foundation in an anticipated second rulemaking action.

Water Quality Certification. In response to Executive Order 13868: *Promoting Energy Infrastructure and Economic Growth*,³³⁹ issued in April 2019, EPA finalized a rule to update the CWA Section 401 certification regulations in June 2020. In accordance with Executive Order 13990, EPA completed a review of the rule and has initiated a new rulemaking to revise the 2020 rule. EPA's intent is to propose a new rule in FY 2022 to update the Agency's longstanding 1971 regulatory requirements for water quality certification under CWA Section 401. The Agency will provide robust engagement with states, tribes, and stakeholders during the rulemaking process. Section 401 of the CWA gives states and authorized tribes the authority to assess potential water quality impacts of discharges from federally permitted or licensed infrastructure projects that may affect "waters of the United States."

Water Quality Programs. The NPDES Program protects human health, safety, and the environment by regulating point sources that discharge pollutants into waters of the United States. In an average year, over 10,000 permits are issued to address discharges from among the approximately 15,000 wastewater treatment facilities, nearly 60 categories of industries, and almost 300,000 stormwater facilities. EPA authorizes the NPDES permit program to state, tribal, and territorial governments, and currently 47 states, tribes in Maine, and U.S. Virgin Islands have authorized programs.

In FY 2023, EPA will continue to implement the water quality programs that control point source discharges through permitting and pretreatment programs. The permitting process is a vital tool for protecting waterways, particularly in underserved communities that may suffer from a combination of economic, health, and environmental burdens, by setting effluent limits, monitoring, and reporting requirements, and other provisions to protect water quality and public health. In addition, as climate change increases the stress on waterways, these permits allow EPA and the states to set appropriate requirements for the waste streams that cause harmful algal blooms (HABs) and increase the temperature of rivers and streams.

In addition, as required under the CWA and Executive Order 12866: *Regulatory Planning and Review*,³⁴⁰ EPA will continue to support cost-benefit analysis for CWA regulatory actions. EPA will work with states, tribes, territories, and local communities to safeguard human health; maintain, restore, and improve water quality; and make America's water systems sustainable and secure, supporting new technology and innovation wherever possible.

Nutrient and HAB Reductions. The FY 2023 request includes resources and FTE to support efforts to reduce nutrient pollution and HABs, which remain the most significant widespread water quality challenge across the country, despite decades of efforts to achieve reductions.³⁴¹ Climate change is exacerbating HABs. The sources and impacts of nutrient pollution and HABs vary depending on geographic location, and span urban, rural, and coastal landscapes. EPA has been working with

³³⁹ For more information, please see: <https://www.federalregister.gov/documents/2019/04/15/2019-07656/promoting-energy-infrastructure-and-economic-growth>

³⁴⁰ For more information, please see: <https://www.epa.gov/laws-regulations/summary-executive-order-12866-regulatory-planning-and-review>.

³⁴¹ For more information, please see <https://www.epa.gov/nutrientpollution>.

its partners to address these challenges. As of January 2022, more than 19,900 square miles of watersheds with waters identified as impaired by nutrients in October 2019 are now attaining standards. In FY 2021, EPA released revised ambient water quality criteria under the CWA to address nutrient pollution in lakes and reservoirs. The FY 2023 request will allow EPA to assist states, territories, and authorized tribes in the development of numeric nutrient criteria through the Nutrient Scientific Technical Exchange Partnership & Support (N-STEPS) Program and support science research related to HABs.

Per- and Polyfluoroalkyl Substances (PFAS). The FY 2023 request directs resources toward addressing PFAS in surface waters through the development of national recommended ambient water quality criteria for PFOA and PFOS; biosolids risk assessments for PFOA and PFOS; methods for detecting PFAS in wastewater; collection of information on discharges of PFAS from nine industrial point source categories to determine if revisions to one or more ELGs is warranted; incorporating PFAS monitoring requirements in NPDES permits and fish tissue monitoring. In FY 2023, EPA will build on the Agency's PFAS Action Plan with the four-year PFAS Strategic Roadmap and comprehensive set of actions that the EPA Council on PFAS is collaboratively developing to guide the Agency's efforts on PFAS.

Water Reuse. To assure that communities have safe, reliable sources of water that are resilient to drought, flooding, and population growth, EPA is working to advance the consideration of water reuse nationwide. This work is being done in collaboration with a broad group of stakeholders including non-governmental organizations, states, tribes, and local governments. In FY 2023, EPA will continue to support the National Water Reuse Action Plan and develop and pursue actions that prioritize advancing technical and scientific knowledge on water reuse to ensure its safety across a range of uses and applications. EPA also will pursue actions in the Plan that provide financial tools to stakeholders to ensure the accessibility of water reuse.³⁴²

Water Sense. The WaterSense Program is a key component of the Agency's efforts to ensure long-term sustainable water infrastructure, reduce GHG emissions, and help communities adapt to drought and climate change. WaterSense provides consumers with a simple label to identify and select water-efficient products to help them save water and money and provides resources and tools to help water utilities carry out efforts to manage water demand and wastewater flows. As of 2022, the Agency has voluntary specifications for three water-efficient service categories and nine product categories. The Program also has a specification to label water-efficient single and multifamily homes that are designed to save water indoors as well as outdoors. Product specifications include water efficiency as well as performance criteria to ensure that products not only save water but also work as well as standard products in the marketplace. Products and homes may only bear the WaterSense label after being independently certified to ensure that they meet WaterSense specifications. As of March 2022, the Program has labeled more than 38,000 models of plumbing and irrigation products and more than 4,200 homes have earned the WaterSense label.³⁴³ In FY 2023, the Program will work with its partners to carry out consumer campaigns that encourage consumers to switch to WaterSense-labeled products and practice other water-efficient behaviors in their homes, outdoors, and in the workplace. EPA also will continue support to

³⁴² For more information, please see <https://www.epa.gov/waterreuse>.

³⁴³ WaterSense Accomplishment Reports (updated annually). For more information visit: <https://www.epa.gov/watersense/accomplishments-and-history>.

additional sectors by working with the ENERGY STAR Program to achieve multiple benefits of water and energy savings.

Urban Waters Federal Partnership Program. The Urban Waters Federal Partnership Program (UWFP) reconnects urban communities with their waterways, particularly communities that are overburdened or economically distressed. The Program supports urban champions, UWFP Ambassadors who work with diverse local stakeholder groups to collaborate on community-led revitalization efforts to improve our Nation's water systems and promote their economic, environmental, and social well-being. At the national level, EPA leads a coalition of 20 federal agencies that support 20 UWFP partnership locations in cities in all ten regions. In FY 2022, all UWFP partners recommitted their support for the Program and endorsed bold new goals for program operations, growth, and actions to address Administration priorities, particularly environmental justice, which is a core goal of the Program. Through this partnership, EPA will continue to revitalize urban waters and the communities that surround them by leading the UWFP Steering Committee, managing national program operations, funding Ambassadors, funding priority improvement projects defined by communities, and maintaining the Urban Waters Learning Network, which provides resources and assistance to hundreds of community leaders nationwide. Starting in FY 2022, the UWFP is expanding its environmental justice role, addressing water equity issues in the context of utility services, disproportionate flood impacts, equitable access to clean water, and youth job creation.

One Water/One Community: EPA will coordinate CWA and Safe Drinking Water Act investments toward historically underserved and overburdened communities that are facing greater climate and water equity challenges to achieve greater resilience, access to clean and safe water, and an improved quality of life. This program will provide holistic support to communities as they respond to the climate crisis by increasing funding for planning and implementation actions across the country. Additionally, EPA will work with tribes to meet the unique needs of their communities.

Infrastructure

EPA will continue its support of the Nation's infrastructure, focusing on efforts to leverage and encourage public and private collaborative efforts and investments in improving the Nation's water infrastructure. This program supports the policy and fiduciary oversight of the CWSRF Program, which provides low-interest loans and additional subsidization to help finance wastewater treatment facilities and other water quality projects.³⁴⁴ The Program supports policies and outreach that help ensure the good financial condition of the State Revolving Funds. Federal capitalization to the SRFs is significantly leveraged; since 1988, the CWSRF Program has made 42,842 assistance agreements, funding over \$145 billion in wastewater infrastructure and other water quality projects.

The FY 2023 request:

- Supports funding for the Environmental Finance Centers Program which will help communities across the country improve their wastewater and stormwater systems, particularly through innovative financing.

³⁴⁴ For more information, please see <https://www.epa.gov/cwsrf>.

- Drives progress on water infrastructure by increasing non-federal dollars leveraged by EPA water infrastructure finance programs (CWSRF, DWSRF and WIFIA). Between FY 2020 and FY 2021, EPA has leveraged over \$22.3 billion in non-federal dollars.
- Supports decentralized (septic or onsite) systems that provide communities and homeowners with a safe, affordable wastewater treatment option by implementing the 2020 Decentralized Wastewater Management MOU. Decentralized wastewater systems are used throughout the country for both existing and new homes as well as commercial or large residential settings; they are in small, suburban, and rural areas where connecting to centralized treatment is often too expensive or may not be available.
- Supports the Wastewater Technology Center that provides accurate and objective resources on innovative and alternative wastewater technologies with a focus on small, mid-sized, and underserved communities. The Center serves to support effective investments in 21st century utilities and will support utilities holistically as they embark on adopting technologies; serve as a forum between the sector and government to identify synergies; share information and springboard new initiatives; support the adoption of innovative and alternative technologies; and increase and facilitate our understanding of the opportunities and impacts of emerging technologies to the National Water Program.
- Supports the Wastewater Technology Clearinghouse, a searchable database that will provide reliable, objective information on proven innovative and alternative technologies for decentralized and centralized alternative wastewater treatment, such as water reuse, small system technologies used by lagoons, resource recovery, and nutrients.
- Supports the Sustainable Utility Management programs, implemented in partnership with industry associations and designed to protect and improve infrastructure investments through the Effective Utility Management Program, the Water Workforce Initiative, and tools such as augmented alternatives analysis that help communities leverage investments to achieve water protection goals and other community economic and societal goals.
- Supports the Water Infrastructure and Resiliency Finance Center in assisting local leaders in identifying financial approaches for their drinking water, wastewater, and stormwater infrastructure needs.
- Supports the Agency's efforts in implementing the Infrastructure Investment and Jobs Act of 2021 (IIJA). EPA will focus on helping disadvantaged communities, ensuring they are able to access the funding provided by IIJA.
- Works on the Clean Water Needs Survey (CWNS).

Program Oversight/Accountability

The Assessment TMDL Tracking Implementation System (ATTAINS). ATTAINS is an online system for accessing information about the conditions in the Nation's surface waters. It provides key information to the Agency, as well as states and tribes, who play a critical role in implementing the CWA. For programs where states and tribes have primacy, the Agency will focus on providing oversight and assistance. The Agency will continue to support tribes and states in electronically reporting CWA Section 303(d) and Section 305(b) assessment conclusions through ATTAINS to track improvements in impaired waters. This tool reduces burden on states to track and report progress in meeting water quality standards in waters targeted for local action and greatly improves evidence-based tracking of local actions to improve water quality.

EPA will continue to track state progress in completing TMDLs, alternative restoration approaches, or protection plans with the goal of 84 percent of plans in place at state identified priority waters by the end of FY 2022. As of January 2022, over 75 percent of state priority waters were addressed by a TMDL, alternative restoration plan, or protection approach. Following the conclusion of this CWA Section 303(d) Vision metric in FY 2022, states will set a new 2-year priority universe and EPA will continue to track new state progress in completing TMDLs, alternative restoration approaches, or protection plans with the goal of 35 percent of plans in place for state identified priority waters by the end of FY 2023. This 2-year “bridge metric” will serve as a transition period before states set priorities under EPA’s new CWA section 303(d) Vision 2.0, which is still in development and expected to be released by September 2022.

EPA continues to support streamlining efforts to allow states to reduce the time they spend on administrative reporting. We will work on improved reporting of the Agency’s metric to reduce the number of square miles of watershed with surface water not meeting standards. Between August 2019 and January 2022, over 55,200 square miles of watershed that contained impaired waters in FY 2019 attained compliance with water quality standards.

NPDES Oversight. The Program continues to work with states to provide oversight and technical assistance to the permit program, support program implementation and pursue comprehensive protection of water quality on a watershed basis. This review also evaluates pretreatment programs across the country. The pretreatment program is a cooperative effort of federal, state, and local governments that perform permitting and enforcement tasks for discharges to publicly owned treatment works.

EPA continues to collaborate with the permitting authorities (states) to identify opportunities to enhance the integrity and timely issuance of NPDES permits. EPA is making efforts to modernize permitting and oversight practices by eliminating its permitting backlog and implementing programmatic measures. Factors that contribute to delays in the permit issuance process include increased complexity of permitting emerging contaminants and permit litigation. After program improvements, between March 2018 and September 2021, the backlog of EPA-issued new and existing NPDES permits decreased from 106 to 22 and 284 to 322, respectively. In FY 2023, EPA will continue to host NPDES-related workshops and provide technical assistance to build permit writer capacity on a range of topics including permit writing, pretreatment, whole effluent toxicity, stormwater, nutrients, and issue general permits where appropriate to address permit integrity and timeliness to continue to reduce the backlog of permits.

In FY 2023, EPA will continue to work with the federal permitting authorities to address PFAS in NPDES permitting. The recently released *Interim Strategy for PFAS in Federally Issued NPDES Permits*, recommends that permit writers include permit requirements for phased-in monitoring and best management practices, as well as a continuing education on permitting practices. In FY 2023, EPA will continue to build upon this strategy by conducting training, collaborating with state permitting authorities, and sharing the latest research and state practices, to prevent this contaminant from reaching surface waters.

EPA will work on addressing court decisions related to Maui, Hawaii in the permitting program. In *County of Maui v. Hawaii Wildlife Fund*, the Supreme Court held that discharges from point

sources through groundwater that eventually reach a water of the United States require an NPDES permit if they are the “functional equivalent” of a direct discharge to a water of the United States. In FY 2023, EPA will continue to provide technical assistance to permit writers to implement this decision effectively in permits.

Integrated Planning. Clean water infrastructure investment needs are documented to be several hundred billion dollars, with wet weather improvements (CSOs, SSOs, bypasses, and stormwater discharges) comprising a significant portion of this total. Investment needs of this magnitude affect utility rates, and disproportionately impact underserved communities. Integrated planning, utilizing green infrastructure, and other tools allow communities to synchronize infrastructure investments with broader community development goals. An integrated approach creates opportunities for affordable, multi-benefit investments that protect public health and enhance resiliency. As an effort to promote the adoption of green or nature-based infrastructure as effective solutions to advance climate resilience or support the resilience of traditional hard infrastructure, EPA has reinvigorated the Green Infrastructure Federal Collaborative.³⁴⁵ This cooperative effort fosters engagement and cooperation between agencies that actively work to promote the implementation of green infrastructure. In FY 2023, EPA will continue to implement integrated planning and green infrastructure practices to address wet weather challenges and increase infrastructure resiliency.

Building Coalitions to Advance the Permitting Program. EPA continues to work with our stakeholders and industry to identify challenges in implementation and best management practices. In FY 2023, EPA will continue to lead the Animal Agriculture Discussion Group (AADG), which consists of animal agriculture representatives from U.S. Department of Agriculture, the animal feeding industry, and the states. AADG provides a forum for industry to engage with permitting authorities, resulting in a shared understanding of how to enhance agricultural practices that lead to greater water quality protection.

Improving NARS Data. Another process improvement effort is focused on streamlining the flow of NARS data from EPA labs to state partners and data analysts. The Agency will continue to implement these process improvements and monitor impact of data delivery on timeliness of analysis and reporting.

Improving timeliness of water quality standards actions. EPA is investing in reducing the backlog of water quality standards (WQS) actions. The Agency will continue to work to decrease the number of state and tribal WQS revision actions that have been submitted to EPA that EPA neither approved nor disapproved within the first 60 days after submittal, and that have yet to be acted upon. The CWA requires EPA to review state and tribal WQS revisions and either approve within 60 days or disapprove within 90 days.

401(a)(2) Notifications. In FY 2022, EPA will develop a system to track 401(a)(2) notifications. EPA will track whether a “may effect” determination has been made and to who (state or tribe) and then note the follow-up coordination, including potential public hearings, EPA recommendations, and whether the EPA recommendation led to improvements in the federal

³⁴⁵ For more information please visit: <https://www.epa.gov/green-infrastructure/green-infrastructure-federal-collaborative>.

permit or license. The notifications will mostly come from the Army Corps of Engineers but can come from any federal permitting or licensing agency.

Performance Measure Targets:

(PM SWP-01) Annual increase in square miles of watersheds with surface water meeting standards that previously did not meet standards.	FY 2022 Target	FY 2023 Target
	8,000	5,000
(PM SWP-02) Annual increase in square miles of watersheds with previously impaired surface waters due to nutrients that now meet standards for nutrients.	FY 2022 Target	FY 2023 Target
	2,100	1,400
(PM TMDL-02) Percentage of priority TMDLs, alternative restoration plans, and protection approaches in place.	FY 2022 Target	FY 2023 Target
	100	35
(PM NPDES-03) Number of existing EPA-issued NPDES individual permits in backlog.	FY 2022 Target	FY 2023 Target
	250	210
(PM INFRA-06) Number of tribal, small, rural, or underserved communities provided with technical, managerial, or financial assistance to improve system operations.	FY 2022 Target	FY 2023 Target
	339	448

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (+\$7,417.0) This change to fixed and other costs is an increase due to the recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- (+\$9,761.0 / +45.8 FTE) This program change is an increase in resources and FTE to support the advancement of clean water infrastructure programs, with an emphasis on building climate change resilience, conducting Clean Water Act regulatory reviews, and advancing environmental justice. This investment also includes \$8.102 million in payroll.
- (+\$7,219.0 / +17.8 FTE) This program change is an increase in resources and FTE to support coordinated community assistance work in support of the One Water/One Community initiative and the Environmental Finance Centers. This investment also includes \$3.149 million in payroll.
- (+\$6,092.0 / +9.0 FTE) This program change is an increase in resources and FTE to support the implementation of the Agency's *PFAS Action Plan* including development of national recommended ambient water quality criteria for PFOA and PFOS; biosolids risk assessments for PFOA and PFOS; methods for detecting PFAS in wastewater; and collection of information on discharges of PFAS from nine industrial point source categories. This investment also includes \$1.592 million in payroll.

- (+\$2,317.0 / +4.0 FTE) This program change is an increase in resources and FTE to expand the Program's existing water workforce initiative to develop a coordinated federal response and action plan to support the water workforce. This will enable EPA to collaborate with our partners to identify the top workforce priorities and implement actions to address those priorities. This investment also includes \$708.0 thousand in payroll.

Statutory Authority:

CWA; Marine Protection, Research, and Sanctuaries Act; Marine Debris Research, Prevention and Reduction Act of 2006; Marine Plastic Pollution Research and Control Act of 1987.

Congressional Priorities

Water Quality Research and Support Grants

Program Area: Clean and Safe Water Technical Assistance Grants

Goal: Ensure Clean and Safe Water for All Communities

Objective(s): Ensure Safe Drinking Water and Reliable Water Infrastructure

(Dollars in Thousands)

	FY 2021 Final Actuals	FY 2022 Annualized CR	FY 2023 President's Budget	FY 2023 President's Budget v. FY 2022 Annualized CR
<i>Environmental Programs & Management</i>	<i>\$0</i>	<i>\$21,700</i>	<i>\$0</i>	<i>-\$21,700</i>
Science & Technology	\$0	\$7,500	\$0	-\$7,500
Total Budget Authority	\$0	\$29,200	\$0	-\$29,200

Project Description:

The purpose of the Water Quality Research and Support Grants Program is to provide training and technical assistance for small public water systems, to help such systems achieve and maintain compliance with the Safe Drinking Water Act (SDWA), and to provide training and technical assistance for small publicly-owned wastewater systems, communities served by onsite/decentralized wastewater systems, and private well owners improving water quality under the Clean Water Act (CWA).

FY 2023 Activities and Performance Plan:

Resources are proposed for elimination for this program in FY 2023. States have the ability to develop technical assistance plans for their water systems using Public Water System Supervision Program grant funds and set-asides from the Drinking Water State Revolving Fund.

Performance Measure Targets:

EPA's FY 2023 Annual Performance Plan does not include annual performance goals specific to this program.

FY 2023 Change from FY 2022 Annualized Continuing Resolution (Dollars in Thousands):

- (-\$21,700.0) This program change proposes to eliminate the Water Quality Competitive Grant Program. Resources are available through other existing programs and states are best positioned to develop technical assistance plans for their water systems.

Statutory Authority:

SDWA § 1442(e); Federal Food, Drug and Cosmetic Act; Food Quality Protection Act; Endangered Species Act; CWA § 104(b)(3).

Exhibit 53

FY 2024 EPA Budget in Brief



United States Environmental Protection Agency
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United States Environmental Protection Agency
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Forward

Usage and Terminology

The FY 2024 EPA Budget in Brief displays funding in columns marked as *FY 2022 Actuals*, *FY 2023 Enacted Level*, *FY 2024 President's Budget*, and the *FY 2024 President's Budget versus the FY 2023 Enacted Level*. Note that the American Rescue Plan, Coronavirus Aid, Relief, and Economic Security Act, Infrastructure Investment and Jobs Act, and Inflation Reduction Act levels are excluded from all figures unless otherwise noted. Amounts in the FY 2022 Actuals column reflect direct financial obligations as reported by the Governmentwide Treasury Account Symbol (GTAS) system. Fixed costs refer primarily to costs that are largely unavoidable in the short term (e.g., pay increases, General Services Administration set rent costs, utilities and security costs, unemployment compensation, and government-wide changes in health benefits).

Please note that amounts presented reflect budget authority unless otherwise specified. Numbers in tables and graphs may not add to totals because of rounding.

*Budget Overview***United States Environmental Protection Agency****FY 2024 Budget Overview**

The United States Environmental Protection Agency (EPA) has a clear and vital mission: to protect human health and the environment. While the Agency, along with tribal, state, and local partners, has made great progress in advancing this mission over the last 50 years, much work remains to guarantee that all people living in the United States share more fully in the benefits of clean air, clean water, clean land, and chemical safety. The urgency of climate change raises the stakes of the Agency's work to protect communities. The FY 2024 President's Budget articulates Agency plans to confront these challenges and advance the priorities described in the *FY 2022 – 2026 EPA Strategic Plan*, which will make real, durable changes to the environmental and public and economic health of all Americans.

The FY 2024 President's Budget for EPA totals \$12.083 billion, \$1.9 billion or 19 percent higher than the FY 2023 enacted level. It includes 17,077 full-time equivalents (FTE), an increase of 1,961 FTE above the current level, to restore the Agency's capacity to carry out its core mission. These resources will advance EPA's efforts to clean up air, land, and water pollution, tackle the climate crisis, advance environmental justice, fund scientific research, support the President's Cancer Moonshot Initiative, and position the Agency with the workforce required to address emerging and ongoing challenges. In furtherance of its mission to protect human health and the environment, the Budget requests robust funding to address the climate crisis by reducing greenhouse gas (GHG) emissions; building resilience in the face of climate impacts; and engaging with the global community, and state, local and tribal partners to respond to this shared challenge. The Agency also will continue to ensure environmental justice is at the forefront of its activities by investing across numerous programs in support of environmental justice and ensuring compliance with several civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from EPA.

Reliable and safe drinking water is critical to every citizen's health while access to clean water for recreation, as well as commerce, supports the environmental and economic health of all communities; therefore, the Budget supports the full implementation of grant programs authorized in the Drinking Water and Wastewater Infrastructure Act (DWWIA). To capitalize on the once-in-a-generation opportunity to make meaningful, long overdue progress, the FY 2024 Budget will complement the significant resources provided in the bipartisan Infrastructure Investment and Jobs Act (IIJA), American Rescue Plan (ARP), and Inflation Reduction Act (IRA) to ensure that EPA, tribes, and states have the support needed to effectively implement these new or significantly expanded programs.

The FY 2024 Budget is rooted in the four foundational principles of the *FY 2022 – 2026 EPA Strategic Plan*: *Follow the Science*, *Follow the Law*, *Be Transparent*, and *Advance Justice and Equity*. These principles form the basis of the Agency's culture and will guide its operations and decision making now and into the future. The *Strategic Plan* focuses on achieving the Agency's and Administration's environmental priorities to instill scientific integrity in decision making, tackle the climate crisis, and embed environmental justice across Agency programs.

*Budget Overview***FY 2024 Funding Priorities****Tackle the Climate Crisis**

The FY 2024 Budget prioritizes tackling climate change with the urgency that science demands. EPA's Climate Change Indicators website presents compelling and clear evidence of changes to our climate reflected in rising temperatures, ocean acidity, sea level rise, river flooding, droughts, heat waves, and wildfires.¹ Resources in the Budget support efforts to mitigate and adapt to the impacts of the climate crisis while spurring economic progress and creating good-paying jobs. Both climate mitigation and adaptation are essential components of the strategy to reduce the threats and impacts of climate change. The Budget empowers EPA to work with partners to address the climate crisis by reducing GHG emissions; building resilience in the face of climate impacts; and engaging with the global community to respond to this shared challenge.

In FY 2024, EPA will drive reductions in emissions that significantly contribute to climate change through regulations of GHGs, climate partnership programs, and support to tribal, state, and local governments. The Agency will accomplish this through the transformative investments in the IRA, IJIA, and our annual appropriation, which funds the core operating accounts of the Agency. In FY 2024 and beyond, EPA will ensure its programs, policies, regulations, enforcement and compliance assurance activities, and internal business operations consider current and future impacts of climate change.

The Budget proposes an additional \$64.4 million and 24 FTE to implement the bipartisan American Innovation and Manufacturing (AIM) Act to continue phasing out potent greenhouse gases known as hydrofluorocarbons (HFCs). Resources support efforts to implement innovative Information Technology solutions, such as a Quick Response (QR) code system and database integration across EPA and Customs and Border Patrol, to ensure that the phasedown is not undermined by illegal imports. By September 30, 2023, EPA expects that annual U.S. consumption of HFCs will be 10 percent below the baseline² of 303.9 million metric tons of carbon dioxide equivalent (MMTCO₂e) consistent with the HFC phasedown schedule implemented in the AIM Act and codified in the implementing regulations. A 10 percent reduction would decrease the U.S. consumption limit to less than 273.5 MMTCO₂e by 2023, meeting an Agency Priority Goal for FY 2022 – 2023 to *Phase down the production and consumption of hydrofluorocarbons (HFCs)*.

Building on investments in the FY 2023 enacted budget, the FY 2024 Budget also provides an additional \$71.5 million and 40.6 FTE, for a total of \$181 million and 257 FTE, for the Climate Protection Program to tackle the climate crisis at home and abroad through an integrated approach of regulations, partnerships, and technical assistance. This additional resource includes \$5 million for EPA to provide administrative support to the \$27 billion GHG Reduction Fund, enacted through the IRA. With enhanced administrative support, EPA will be able to more efficiently and effectively administer competitive grants to mobilize financing and leverage private capital for clean energy and climate projects that reduce GHG emissions with an emphasis on projects that

¹ For more information, please visit: <https://www.epa.gov/climate-hfcs-reduction/final-rule-phasedown-hydrofluorocarbons-establishing-allowance-allocation>.

² <https://www.epa.gov/climate-hfcs-reduction/final-rule-phasedown-hydrofluorocarbons-establishing-allowance-allocation>

Budget Overview

benefit low-income and disadvantaged communities. Additionally, EPA provides investments to support the private sector in calculating GHG emissions and climate risk and setting science-based climate targets, as well as investments to embed the economic impacts of climate change and decarbonization efforts within government economic projects.

In FY 2024, EPA will continue to take action to reduce dangerous air pollution and GHG emissions from mobile sources. The FY 2024 Budget provides \$150 million for the Diesel Emissions Reduction Act (DERA) Grant Program, a \$50 million increase above the FY 2023 enacted level, to expand the availability of DERA grants and rebates to reduce harmful diesel emissions, with a focus on school buses, ports, and communities disproportionately affected by air quality problems.³ These locations also are often where lower income communities and communities of color suffer from exposure to higher levels of pollution.

The Agency also will commit an additional \$62.3 million and 46.8 FTE for a total of \$180 million and 370 FTE to the Federal Vehicle and Fuels Standards and Certification Program to build on investments in FY 2023. This includes the development of analytical methods, regulations, and analyses to support climate protection by controlling GHG emissions from light-, medium-, and heavy-duty vehicles. In FY 2024, EPA also will promulgate a final rulemaking to establish new GHG emissions standards for heavy-duty engines and vehicles. This rule will reduce GHG and other emissions from highway heavy-duty vehicles, the second largest source of transportation GHG emissions. In support of Executive Order 14037: *Strengthening American Leadership in Clean Cars and Trucks*,⁴ EPA's longer-term rulemaking to set emission standards will save consumers money, cut pollution, boost public health, advance environmental justice, and tackle the climate crisis. EPA will establish new multi-pollutant emissions standards, including for GHG emissions, for light- and medium-duty vehicles beginning with model year 2027 and extending through at least model year 2030.

Acting domestically to reduce GHG emissions is an important step to tackle the climate crisis; however, environmental protection is a shared responsibility that crosses international borders, and climate change poses a threat that no one government can solve alone. The FY 2024 Budget provides an additional \$18 million and 16 FTE to support tackling the climate crisis abroad. Through a collaborative approach with international counterparts, we will enhance capacity building programs for priority countries with increasing GHG footprints, to enable stronger legislative, regulatory and legal enforcement. To this end, President Biden has ambitiously laid out a path, by 2030, for the United States to cut GHG emissions by at least half from 2005 levels showing our international partners that America is doing its part to reduce global emissions. EPA will continue to engage both bilaterally and through multilateral institutions to improve international cooperation on climate change. These efforts help fulfill EPA's commitment to Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad*.

Tackling the climate crisis depends not only on the Agency's ability to mitigate GHG emissions but also the capacity to adapt and deliver targeted assistance to increase the Nation's resilience to climate change impacts. As part of a whole-of-government approach, EPA will directly support

³ DERA Fourth Report to Congress: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100X1BI.pdf>.

⁴ Executive Order 14037: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/05/executive-order-on-strengthening-american-leadership-in-clean-cars-and-trucks/>.

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federal partners, tribes and indigenous communities, states, territories, local governments, environmental justice organizations, community groups, and businesses as they anticipate, prepare for, adapt to, and recover from the impacts of climate change. In FY 2024, the Budget provides an additional \$45.3 million and 26.5 FTE for climate adaptation efforts to strengthen the adaptive capacity of tribes, states, territories, local governments, communities, and businesses. The Budget also provides resources to support the implementation of the Agency's Climate Adaptation Action Plan, which accelerates and focuses attention on five priority actions the Agency will take over the next four years to increase human and ecosystem resilience as the climate changes and disruptive impacts increase.

Take Decisive Action to Advance Environmental Justice and Civil Rights

The communities hardest hit by pollution and climate change are most often communities of color, indigenous communities, rural communities, and economically disadvantaged communities. For generations, many of these communities, which also are among the most vulnerable, have been overburdened with higher instances of polluted air, water, and land. The inequity of environmental protection is not just an environmental justice issue but also a civil rights concern. Neither an individual's skin color, nor the community in which they live, should determine whether they have clean air to breathe, safe water to drink, or healthy environments in which their children can play. And yet, the development, implementation, and enforcement of environmental laws, regulations, and policies has not always ensured the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income. In FY 2024 EPA provides over \$758 million within programs under Goal 2 to advance environmental justice and civil rights across the Nation and across Agency efforts.

EPA will continue efforts in FY 2024 to implement the President's Justice40 Initiative with the goal of delivering at least 40 percent of the overall benefits of relevant federal investments to underserved and overburdened communities. In June 2022, EPA announced 73 programs that will be covered under the Justice40 initiative, including the Clean Water and Drinking Water State Revolving Funds, Brownfields Projects Program, Superfund Remedial Program, and the Clean School Bus Program. EPA is currently looking at ways to ensure the delivery of benefits to disadvantaged communities to achieve the 40-percent goal within existing legal authorizations. EPA is also developing methodologies to track and report the benefits going toward communities that are marginalized, underserved, and overburdened by pollution. Advancing the Administration's environmental justice priorities is a foundational component of the Agency's FY 2024 Budget, and success requires a whole-of-EPA approach. EPA's Budget recognizes the importance of embedding environmental justice principles in all Agency programs and implementing Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad*, and Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.

To elevate environmental justice as a top Agency priority in FY 2024, EPA's newest National Program Manager, the Office of Environmental Justice and External Civil Rights (OEJECR), will lead the agency-wide effort to address the needs of overburdened and underserved communities and maximize the benefits of the Agency's programs and activities to underserved communities. By September 30, 2023, EPA expects to develop and implement a cumulative impacts framework,

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issue guidance on civil rights compliance for recipients of federal funding, establish at least 10 indicators to assess EPA's performance in eliminating disparities in environmental and public health conditions, and train staff and partners on how to use these resources, to meet an Agency Priority Goal for FY 2022 – 2023 to *Deliver tools and metrics for EPA and its tribal, state, local, and community partners to advance environmental justice and external civil rights compliance.*

The FY 2024 Budget will expand upon the FY 2023 enacted budget to enhance the Agency's ability to develop, manage, and award new competitive grants to reduce the historically disproportionate health impacts of pollution in communities with environmental justice concerns. Nearly \$375 million and 265 FTE, an increase of \$267 million and 41 FTE above the FY 2023 enacted, is requested for the Environmental Justice Program to expand support for community-based organizations, indigenous organizations, tribes, states, local governments, and territorial governments in pursuit of identifying and addressing environmental justice issues through multi-partner collaborations. The FY 2024 Budget proposes to invest \$91 million and 50 FTE on building out community-centered technical assistance hubs to support basic capacity building of communities and their partners to advance equity and justice in their communities. With the FY 2024 investment of \$34.7 million and 167 FTE in the Tribal Capacity Building Program, an increase of \$20 million and 88 FTE above the FY 2023 enacted, EPA will strengthen efforts to support nationwide core work in the tribal capacity building program with a focus on addressing the climate change crisis. In addition, EPA will implement the revised EPA Tribal Consultation Policy and Implementation Guidance to improve consultation practices in conformance with the executive order on tribal consultation and train EPA staff.

To fully implement its external civil rights mission with quality and consistency and in a way that yields positive and sustainable impacts for the most overburdened and vulnerable communities where protection of civil rights may be at risk, EPA must embed civil rights obligations into its programmatic actions and provide the level of funding and staffing necessary for success. All applicants for and recipients of EPA financial assistance, including state and local governments as well as private entities, have an affirmative obligation to comply with federal civil rights laws, both as a prerequisite to obtaining EPA financial assistance and in administering their programs and activities. EPA enforcement of these anti-discrimination provisions is a vital part of the Agency's goal to advance equity and environmental justice. Consistent enforcement of federal civil rights laws for recipients of federal funds will prevent decisions that can overburden underserved communities and create or exacerbate significant inequities in human health protection and environmental pollution. In FY 2024, the Budget provides a total of \$31.5 million and 144 FTE, an increase of \$18.6 million and 77.2 FTE above the FY 2023 enacted level, to build civil rights capacity across the Agency and to reduce the backlog of civil rights cases such as claims of discrimination in communities and pre-award and post-award compliance activities. In the long term, the vigorous enforcement of civil rights laws will address historical and systemic barriers that contribute to the environmental injustice affecting vulnerable communities.

Enforce Environmental Laws and Ensure Compliance

Ensuring compliance and enforcement of the Nation's environmental laws is foundational to achieving EPA's mission. The Agency will hold bad actors accountable for their violations, with a particular focus on protecting communities with multiple pollution sources and ensuring a level

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playing field in the marketplace for regulated sources and parties. In FY 2024, EPA will provide \$757 million and 3,354 FTE to strengthen compliance with the Nation's environmental laws and hold violators accountable. The FY 2024 Budget provides an increase of \$22.6 million and 38.3 FTE above the FY 2023 enacted levels to rebuild the inspector corps, which is EPA's highest enforcement priority. The inspector corps will be able to be more efficient attributable to the resources provided in the IRA that are targeted for improving enforcement technology and inspection software and for other related purposes. EPA also will leverage funding from the IRA for enhanced tools (such as the Integrated Compliance Information System, ICIS) and technical assistance to the regulated community to support understanding and compliance with environmental laws. EPA will implement a comprehensive action plan in FY 2024 for integrating environmental justice and climate change considerations throughout all aspects of its enforcement and compliance assurance work. The Agency will increase the percentage of inspections impacting overburdened communities and provide greater public access to compliance data to help a community better understand and manage risks. In addition, EPA will advance its efforts to address climate change mitigation and adaptation issues through targeted inspections, compliance monitoring, and technical assistance directed to sources with the most potential for noncompliant emissions of GHGs that contribute to climate change.

The FY 2024 Budget includes \$165 million for the Compliance Monitoring Program, an increase of \$50.9 million and 41.5 FTE above the FY 2023 enacted, to support enforcement and compliance assurance efforts with a focus on incorporating environmental justice considerations into programmatic work. EPA will leverage its resources to expand software solutions for field inspectors to improve the effectiveness and efficiency of compliance inspections and continue the data system modernization effort, including enforcement and compliance assurance data systems. These resources will complement those provided to EPA under the IRA that are targeted for improving enforcement technology, inspection software, and other related purposes. In FY 2024, EPA will provide robust targeted oversight and support to tribal, state, and local programs. The Agency will prioritize work with states to develop methods that successfully leverage advances in both monitoring and information technology to increase the availability of information about environmental conditions in disadvantaged communities.

EPA's Civil Enforcement Program is designed to protect human health and the environment by ensuring compliance with the Nation's environmental laws. The Budget provides \$246 million for civil enforcement efforts, which includes funding to increase enforcement efforts in communities with high pollution exposure and to prevent the illegal importations and use of HFCs in the United States. These resources also include an additional \$3.4 million and 7 FTE over the FY 2023 enacted level to support compliance and enforcement of the Coal Combustion Residual (CCR) Program. The CCR Program ensures that coal ash disposal units do not present dangerous structural stability issues that could put surrounding communities at risk, in particular, those in rural and underserved areas. These resources will allow the Agency to continue analyzing groundwater monitoring data and ensuring facility corrective action and closure efforts are complying with the regulatory requirements and adequately addressing coal ash disposal risks. Together, these resources will enable EPA to incorporate environmental justice and climate change considerations into all phases of case development without displacing other important enforcement and compliance assurance work. For example, EPA may focus on opportunities to reduce GHG emissions while providing co-benefits in underserved communities, expand inclusion of GHG mitigation and climate

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resilience remedies, and prioritize environmental justice concerns in case resolutions where appropriate.

Overburdened and underserved communities are more often victims of environmental crime. EPA's FY 2024 Budget supports the development of a specialized Criminal Enforcement Initiative focused on addressing environmental justice issues with other Agency priority National Compliance Initiatives in partnership with the Department of Justice (DOJ). The Criminal Enforcement Initiative focuses on the prioritization of investigative resources to overburdened communities and vulnerable populations, while maintaining case initiation standards and reducing the impact of pollution. The FY 2024 Budget includes \$75.1 million and 296 FTE to support the Criminal Enforcement Program by targeting investigations on the most egregious environmental cases.

In FY 2024, EPA will continue to advance efforts to protect fenceline communities at risk to environmental health hazards from nearby oil and chemical facilities and underground storage tank releases. Fenceline communities are often low-income and/or communities of color facing disproportionate risks from environmental health hazards, particularly in light of severe weather events caused by a changing climate. The FY 2024 Budget invests additional resources to advance protection of these communities by increasing inspections and compliance assistance to ensure nearby facilities are adhering to regulations designed to protect vulnerable populations. This investment also will be used to create and expand programs to improve environmental protections and increase monitoring capability in fenceline communities.

Ensure Clean and Healthy Air for All Communities

Providing clean and healthy air for all communities is a central tenet of EPA's mission. Long-term exposure to elevated levels of certain air pollutants has been associated with increased risk of cancer, premature death, and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems, while short-term exposure can exacerbate asthma and lead to other adverse health effects and economic costs.⁵ Relying on the latest science, EPA will continue work to reduce emissions of the six National Ambient Air Quality Standards (NAAQS) pollutants—particulate matter (PM), ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, and lead—and air toxics from mobile and stationary sources. In FY 2024, EPA will leverage approaches including regulatory tools, innovative market-based techniques, public and private-sector partnerships, community-based approaches, voluntary programs that promote environmental stewardship, and programs that encourage adoption of cost-effective technologies and practices. The FY 2024 Budget includes approximately \$1.4 billion and 2,207 FTE to advance EPA efforts in protecting human health and the environment from the harmful effects of air pollution.

Building upon the work under the ARP and IRA, the FY 2024 Budget requests an additional investment of \$100 million to develop and implement a community air quality monitoring and notification program to provide real-time data to the public in areas with greatest exposure to harmful levels of pollution, such as smoke pollution from wildfires. In FY 2024, the Agency will continue to work closely with tribes, states, and local air quality agencies to develop the most effective approaches to meet community concerns. The Budget includes resources to fulfill the

⁵ For more information, please visit <https://www.epa.gov/air-research/research-health-effects-air-pollution>.

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President's commitment to engage meaningfully with overburdened and vulnerable communities during the entire rulemaking process, from pre-proposal through final promulgation and implementation.

In FY 2024, EPA will make critical resource investments in air regulatory development and implementation work, particularly to support NAAQS review and implementation activities. The President directed EPA to review the 2020 PM NAAQS and the 2020 Ozone NAAQS in accordance with Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*.⁶ An increase of \$89.9 million and 193 FTE over the FY 2023 enacted is requested to develop and implement climate and clean air regulations and programs, including supporting NAAQS review and implementation work. Critical to successful NAAQS implementation are activities such as timely issuance of rules and guidance documents, ongoing outreach to states and other entities, development of NAAQS implementation and permitting-related tools, and taking timely action on State Implementation Plans (SIPs) and reducing the SIP backlog. In total, the FY 2024 Budget provides \$367 million and 1,080 FTE, an increase of \$208 million and 200 FTE above FY 2023 enacted levels, for the Federal Support for Air Quality Management Program.

The FY 2024 President's Budget also provides \$47.5 million and 165 FTE for the Federal Stationary Source Regulations Program to finalize the review of standards for power plants, as well as rules to limit GHG emissions from new and existing sources in the power sector and new and existing facilities in the oil and gas sector. The Budget provides \$47.6 million and 71.4 FTE for the Reducing Risks from Indoor Air Program to expand technical assistance to community-based asthma programs to reduce asthma disparities, particularly in disadvantaged communities, and provide technical support to high-risk, low-income communities to reduce lung cancer risk.

The Agency also will seek to address the air quality challenges presented by wildfires. Wildfire smoke can vary from year to year but can typically make up approximately 30 percent of total PM_{2.5} emissions in some regions of the U.S., aggravating heart and lung disease and causing premature death. Climate change has already led to a marked increase in wildfire season length, wildfire frequency, and burned area.⁷ The FY 2024 Budget includes \$7 million for Wildfire Smoke Preparedness, and EPA will continue to work with the U.S. Forest Service and other federal, state, and community agencies and organizations to identify ways to improve public notification and reduce the public health risk from air pollution resulting from wildfires.

The Agency is also committed to protect both the climate system and the stratospheric ozone layer, which shields all life on Earth from harmful solar ultraviolet (UV) radiation. The FY 2024 Budget will include \$72.2 million and 52.2 FTE for Stratospheric Ozone: Domestic Programs to implement the American Innovation and Manufacturing (AIM) Act of 2020 to phase out climate-damaging hydrofluorocarbons (HFCs), building on the successful work with manufacturers and phase-out methodologies that have led to progress restoring the ozone layer.

⁶ Executive Order 13990: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

⁷ For more information on climate impacts, risk and adaptation in the United States visit: <https://nca2018.globalchange.gov/>.

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The Agency also will provide \$423 million in financial support through Categorical Grant Programs to EPA's tribal, state, and local partners, an increase of \$158 million over the FY 2023 enacted level, to further their efforts in implementing air quality management programs. These programs are critical for EPA's state, tribal and local partners to support implementation of environmental laws in states and tribal lands across the country and assure tangible progress for historically overburdened and underserved communities through sustained financial support. Funding for state and tribal support has been largely flat since 2018, while the need and expectations from EPA partners has only increased. In FY 2024, EPA provides \$400 million for the State and Local Air Quality Management Program to provide grants to tribes and states that will support on-the-ground efforts to address GHG emissions and continuing core work, such as state and local air quality monitoring networks, air permitting programs, emission inventories, air quality forecasts, air quality training, visibility improvements, and air toxic monitoring efforts. In FY 2024, EPA also includes \$23.1 million for the Categorical Grant: Tribal Air Quality Management Program. Funding will assist tribes to develop and implement air pollution control programs for Indian Country to prevent and address air quality concerns, including mitigating and adapting to the effects of climate change. EPA will work with tribes to assess environmental and public health conditions in Indian Country by developing emission inventories and, where appropriate, expanding the siting and operating of air quality monitors.

Ensure Clean and Safe Water for All Communities

EPA's most recent clean and drinking water needs assessment surveys, published in 2016 and 2018, respectively, determined that the country would need to invest more than \$743 billion over the next 20 years to maintain, upgrade, and replace critical drinking water and wastewater infrastructure.⁸ In FY 2023, EPA will finalize the seventh Drinking Water Infrastructure Needs Survey and Assessment (DWINSAs). This survey provides a 20-year capital investment need for public water systems that are eligible to receive funding from state Drinking Water State Revolving Fund (DWSRF) Programs. The survey also informs the DWSRF allocation formula as required under the Safe Drinking Water Act (SDWA). Beginning in FY 2024, early framework activities for the eighth DWINSAs will begin. Today, up to 10 million homes in America and more than 400,000 schools and childcare centers rely on drinking water distribution lines that contain lead—a clear and present danger to the health of children. Replacing these lead pipes and adapting America's water infrastructure to be more resilient to climate change is critical to keeping communities healthy and safe, consistent with the President's Lead Pipe and Paint Action Plan.⁹ As the climate warms, more extreme rainfall and flooding events could damage or overwhelm water systems, leaving entire communities without safe water supplies for days or weeks. While there are significant funds from IIJA, there is still more demand and the FY 2024 Budget builds on the \$8.83 billion available to State Revolving Funds (SRFs) in FY 2024 from the law. The Budget also includes \$268 million and 1,056 FTE for the Surface Water Protection Program, an increase of \$43.5 million and 46.1 FTE over the FY 2023 enacted level, to support efforts to protect, improve, and restore the quality of our Nation's coastal waters, rivers, lakes, wetlands, and streams.

⁸ For more information on EPA's Clean Water and Drinking Water Needs Survey Reports, visit: <https://www.epa.gov/cwns> and <https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment>.

⁹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan>.

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The Budget provides \$219 million for two grants dedicated to remediating lead contamination in water – Reducing Lead in Drinking Water and Lead Testing in Schools – an increase of \$163 million over the 2023 enacted level. The Budget also funds other grants and loans that can be used for lead service line replacements. The Budget updates the cross-government Lead Pipe Replacement Funding Inventory that was published for the first time with the 2023 President's Budget.

EPA's water infrastructure financing programs will advance the Agency's ongoing commitment to infrastructure repair and replacement and also build climate resilience into the water sector. At the same time, these investments will create hundreds of thousands of good-paying jobs across the country.¹⁰ The Budget provides more than \$4 billion for water infrastructure, an increase of \$1 billion over the 2023 enacted level. These resources would advance efforts to upgrade drinking water and wastewater infrastructure nationwide, with a focus on underserved and rural communities that have historically been overlooked. The Budget also funds all of the authorizations in the original Drinking Water and Wastewater Infrastructure Act (DWWIA) of 2021 and includes funding levels of \$2.8 billion for EPA's State Revolving Funds (SRF), which complements funds provided for water infrastructure programs in the bipartisan IJA. Also included is approximately \$1.2 billion for grant programs authorized in the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, the America's Water Infrastructure Act (AWIA) of 2018, and DWWIA. These resources are intended to upgrade aging infrastructure, invest in new technologies, and provide assistance to communities.

Another goal of the Agency's infrastructure repair and replacement efforts is to address lead and other contaminants such as per- and polyfluoroalkyl substances (PFAS) in drinking water, especially in small and underserved communities. AWIA strengthened many existing programs within EPA, including programs authorized by the WIIN Act, while creating new programs to tackle significant public health and environmental concerns. DWWIA, as authorized under IJA, builds on the foundation of AWIA and WIIN to strengthen the federal government's ability to upgrade the Nation's drinking water and wastewater infrastructure. These investments will enable the Agency to increase water infrastructure resilience and sustainability, provide assistance for underserved communities, and reduce lead in drinking water. By September 30, 2023, in support of *Goal 5, Ensure Clean and Safe Water for All Communities* and *Goal 6, Safeguard and Revitalize Communities*, EPA expects to provide technical assistance to at least 10 communities to help achieve clean and safe water, an Agency Priority Goal for FY 2022 – 2023 to *Clean up contaminated sites and invest in water infrastructure to enhance the livability and economic vitality of overburdened and underserved communities*.

In FY 2024, EPA provides \$150 million and 554 FTE, an increase of \$22.9 million and 15.1 FTE, to support Drinking Water Programs to better protect communities, especially overburdened and underserved communities. This includes efforts to finalize the Lead and Copper Rule Improvements (LCRI) regulation, which aims to strengthen the Lead and Copper Rule Revisions (LCRR) issued in 2021 to more proactively replace lead service lines and more equitably protect public health. In August 2022, EPA released Guidance for Developing and Maintaining a Service

¹⁰ Jobs created estimates are based on the *U.S. Water Alliance: The Value of Water Campaign: The Economic Benefits of Investing in Water Infrastructure*.

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Line Inventory¹¹ to support water systems with their efforts to develop inventories and to provide states with needed information for oversight and reporting to EPA. This guidance will help water systems comply with the LCRR requirement to prepare and maintain an inventory of service line materials by October 16, 2024.

Resources also will support reducing public health and environmental threats from PFAS by finalizing the new drinking water standards in FY 2024. An additional \$56.5 million is provided to accelerate progress on EPA's PFAS Strategic Roadmap,¹² and enable EPA to move more quickly on policy, regulatory, and enforcement actions across multiple statutory authorities, and to support states and tribes in taking action on PFAS. EPA will continue its efforts in FY 2024 to develop analytical methods, drinking water health advisories, toxicity values, effluent limitation guidelines, as well as risk communication and other tools to support states, tribes, and localities in managing PFAS risks in their communities.

Clean Water and Drinking Water State Revolving Loan Programs

The FY 2024 Budget includes \$1.64 billion for the Clean Water State Revolving Fund (CWSRF) Program to capitalize state revolving loan funds in all 50 states and Puerto Rico to finance infrastructure improvements for public wastewater systems and projects to improve water quality. It represents the largest source of federal funds for states to provide loans and other forms of assistance for water quality projects including construction of wastewater treatment facilities, water and energy efficiency projects, and green infrastructure projects. In addition to capitalizing the CWSRF Program, a portion of the Budget will provide direct grants to communities in tribal nations and territories. The sanitation infrastructure in these communities often trails the rest of the country, causing significant public health concerns.

EPA's DWSRF is designed to assist public water systems in financing the costs of drinking water infrastructure improvements needed to comply with SDWA requirements, protect public health, and support tribal, state, and local efforts to protect drinking water. The FY 2024 Budget includes \$1.13 billion for the DWSRF to help finance critical infrastructure improvements to public water systems. States have considerable flexibility to tailor their DWSRF Programs to their unique circumstances and needs and to consider how best to achieve the maximum public health protection and infrastructure development that benefits all people living in the United States.

Infrastructure within the water sector goes beyond repair and replacement to include the safety and reliability of the IT systems used to monitor clean and safe water. In FY 2024, EPA provides \$25 million for a grant program to advance cybersecurity infrastructure capacity and protections within the water sector. An additional \$19.6 million is provided to implement regulatory action to mitigate the risks of cyberattacks in the water sector as well as increase the Agency's ability to respond to incidents. Cybersecurity represents a substantial concern for the water sector, given the prevalence of state-sponsored and other malevolent attacks on the sector as well as the sector's inherent vulnerability and limited technical capacity to address cyber issues.

Water Infrastructure Finance and Innovation Act (WIFIA)

¹¹ https://www.epa.gov/system/files/documents/2022-08/Inventory%20Guidance_August%202022_508%20compliant.pdf.

¹² <https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024>.

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The WIFIA Program, created in 2014, is a critical tool to increase water infrastructure investments by leveraging public and private sources of funds to maximize the reach of federal funds. As of February 2023, EPA had issued 100 WIFIA loans to communities across the country totaling over \$17 billion in credit assistance to help finance more than \$36 billion for water infrastructure projects.¹³ WIFIA loans for these projects have saved communities nearly \$5 billion, which can be used for additional infrastructure investment and to keep rates affordable for water system users. These WIFIA-financed projects have created over 123,000 jobs and benefited more than 50 million people, demonstrating that WIFIA credit assistance is an effective tool to help address a variety of water infrastructure needs to support communities nationwide. The FY 2024 Budget supports WIFIA with \$80.4 million in total funding.

Geographic Programs

Beyond water infrastructure, the Agency recognizes the important role federal assistance provides to protect water bodies of special ecological and economic importance to our Nation. Through EPA's Geographic Water Programs, the Agency assists state and multi-state partners and tribes to accelerate and manage the restoration of the ecological health of these water bodies. In total, the FY 2024 Budget provides \$682 million for EPA's Geographic Water Programs to advance work on projects that target the most significant environmental problems in these important water bodies and watersheds. In FY 2024, EPA will continue to provide resources to accelerate ecological restoration and sustainable management for the Chesapeake Bay, Columbia River, Gulf of Mexico, the Great Lakes, Lake Champlain, Lake Pontchartrain, Long Island Sound, Northwest Forest Watershed, Puget Sound, San Francisco Bay, South Florida, and Southeast New England. Funding will help monitor and restore these ecological treasures and enable sustainable use for years to come. These important geographic efforts also will benefit from the \$343 million provided by the IJA to create synergies for EPA's Geographic Programs in FY 2024.

Categorical Grants

The Agency will provide \$493 million in financial support through Categorical Grant Programs to EPA's tribal, state, and local partners to support their efforts in implementing key provisions of the Clean Water Act. Within this amount, \$279 million is provided to the Section 106 Grants Program, an increase of \$42.4 million from the FY 2023 enacted budget, which funds state, interstate, and tribal water pollution control programs to support actions to identify and take actions to assess and mitigate PFAS in the environment, and is a critical funding source to establish, expand, and implement water quality programs to protect and restore water resources (e.g., rivers, streams, lakes, wetlands, and groundwater). Also included is \$189 million for the Section 319 Grants Program, which will continue to focus on implementing watershed projects and maintaining current Nonpoint Source Management Programs to restore impaired waterbodies to meet water quality standards and protect unimpaired waters. In addition, EPA provides \$133 million for the Public Water System Supervision (PWSS) Program, which helps support state drinking water programs and technical assistance providers in achieving and maintaining compliance at drinking water systems, amplifying best practices, strengthening state capacity, and certifying drinking water operators. EPA's efforts under this program will help deliver clean drinking water, improve public health, and support environmental justice for overburdened and underserved communities, including rural and tribal communities.

¹³ <https://www.epa.gov/newsreleases/epa-announces-100th-wifia-loan-investing-115-million-improve-resilience-extreme>

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Safeguard and Revitalize Communities

Preventing and cleaning up environmental damage that harms communities and poses a risk to public health and safety continues to be a top priority for the Administration.

Cleaning up contaminated lands so that they can be redeveloped and returned to productive use is a challenge faced by many communities. Cleaning up America's most contaminated land and reducing exposure to toxic substances are critical components of the Agency's strategy to address human health impacts, particularly in underserved communities where many of these sites are located. Approximately 22 percent of Americans live within three miles of a Superfund site. Recent research shows Superfund cleanup actions lowered the risk of elevated blood lead levels by roughly 13 to 26 percent for children living within 1.2 miles of a Superfund National Priorities List (NPL) site where lead is a contaminant of concern.¹⁴ Remediating contaminated land and restoring it to productive use is not only an environmental imperative but presents an economic opportunity as well. A peer reviewed study found that residential property values within three miles of Superfund sites increased between 18.7 and 24.4 percent when sites were cleaned up and removed from the NPL.¹⁵

The FY 2024 Budget enables the Agency to continue efforts to clean up hazardous waste sites in communities across the Nation, including those where vulnerable populations, such as children, the elderly, and economically disadvantaged individuals, reside. These hazardous sites also are vulnerable to the effects of climate change, making remediation even more urgent. Federal data in a recent Government Accountability Office (GAO) report suggests that approximately 60 percent of Superfund sites overseen by EPA are in areas that are vulnerable to wildfires and different types of flooding—natural hazards that climate change will exacerbate.¹⁶ The Agency is working to clean up these sites considering climate change implications to protect at-risk populations.

The Budget provides approximately \$350 million for the Superfund Program to continue cleaning up some of the Nation's most contaminated land and respond to environmental emergencies and natural disasters, in addition to an estimated \$2.5 billion in Superfund tax receipts that will be available to EPA in 2024. The Superfund tax receipts will allow the Agency to continue critical Superfund pre-construction work such as site characterization, construction design, and community outreach/engagement, as well as critical remedial actions to clean up sites as described above, which supports the Administration's Justice40 Initiative. Additionally, this funding will allow the Superfund Emergency Response and Removal Program to effectively and efficiently address situations that require emergency response and removal actions such as chemical releases, fires or explosions, natural disasters, and other threats to people from exposure to hazardous substances including from abandoned and uncontrolled hazardous waste sites.

Investing in brownfields cleanup and redevelopment can revitalize main streets, neighborhoods, and rural communities, increase residential property values, and create good-paying jobs. The

¹⁴ Details can be found at <https://www.epa.gov/environmental-economics/research-environmental-economics-ncee-working-paper-series>.

¹⁵ Shanti Gamper-Rabindran and Christopher Timmons. 2013. "Does cleanup of hazardous waste sites raise housing values? Evidence of spatially localized benefits," *Journal of Environmental Economics and Management* 65(3): 345-360, <http://dx.doi.org/10.1016/j.jeem.2012.12.001>.

¹⁶ <https://www.gao.gov/products/gao-20-73>.

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Budget provides \$217 million for EPA's Brownfields Program to provide technical assistance and grants to communities so they can safely clean up and reuse contaminated properties, as well as \$20 million for the new Alaska Contaminated Lands Program. These programs support the President's Cancer Moonshot initiative by addressing contaminants that lead to greater cancer risk. Approximately 143 million people live within three miles of a brownfields site that receives EPA funding.¹⁷ In FY 2022, EPA leveraged 14,170 jobs and \$1.8 billion in cleanup and redevelopment funds and made 662 additional brownfields sites ready for anticipated use (RAU). Activities undertaken in FY 2024 will leverage approximately 13,400 jobs and \$2.6 billion in other funding sources.¹⁸ By September 30, 2023, in support of *Goal 6, Safeguard and Revitalize Communities* and *Goal 5, Ensure Clean and Safe Water for All Communities*, EPA expects to provide technical assistance to at least 10 communities to help achieve reduced exposures to hazardous substances, an Agency Priority Goal for FY 2022 – 2023 to *Clean up contaminated sites and invest in water infrastructure to enhance the livability and economic vitality of overburdened and underserved communities*.

In FY 2024, the Agency will continue to invest in domestic recycling and solid waste infrastructure that build a circular economy, one where reuse and recycling is the norm. According to the U.S. EPA Recycling Economic Information Report, the U.S. recycling industry supports 680,000 jobs and provides \$5.5 billion annually in tax revenues. In addition to these human resources and financial returns, the materials themselves hold great value, as recent data indicate that materials worth \$9 billion are thrown away each year. The FY 2024 Budget includes \$12.7 million and 53.4 FTE in the Resource Conservation and Recovery Act Waste Minimization and Recycling Program to better support the sustainable management of resources, in addition to a \$10 million for Solid Waste Infrastructure in grant funding under State and Tribal Assistance Grants (STAG). This funding will advance efforts to strengthen the U.S. recycling system, address the global issue of plastic waste, engage communities, and prevent and reduce food loss and waste.

The Agency has a statutory role to ensure that contamination is quickly and effectively cleaned up while ensuring protection of human health and the environment from releases of hazardous substances. Additional resources are provided to help increase protection of fence-line communities from hazardous substance releases from facilities and underground storage tanks. In FY 2024, the Budget includes \$37.4 million in the Federal Facilities Program to enable EPA to address critical gaps in its ability to oversee federal agencies/facilities cleanup, including Department of Defense PFAS cleanup under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Agency also will assist with homeland security goals by investing in critical resources to replace the outdated Portable High-Throughput Integrated Laboratory Identification System (PHILIS) equipment. PHILIS is EPA's mobile laboratory asset for the on-site analysis of chemical warfare agent and toxic industrial compound contaminated environmental samples. Resources also will be provided to upgrade the Chemical Incident and Radiological Reconnaissance on Unmanned Systems (CIRRUS) with the Airborne Spectral Photometric

¹⁷ U.S. EPA, Office of Land and Emergency Management 2020. Data collected includes: (1) Superfund, Brownfield, and RCRA Corrective Action site information as of the end of FY 2019; (2) UST/LUST information as of late-2018 to mid-2019 depending on the state; and (3) 2015-2018 American Community Survey (ACS) Census data.

¹⁸ U.S. EPA, Office of Land and Emergency Management Estimate. All estimates of outputs and outcomes are supported by the data that is entered by cooperative agreement recipients via EPA's Assessment, Cleanup, and Redevelopment Exchange System (ACRES) database.

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Environmental Collection Technology (ASPECT) airborne screening capability to more effectively and efficiently support emergency response.

Ensure the Safety of Chemicals for People and the Environment

The FY 2024 Budget provides additional resources to build Agency capacity to manage chemical safety and toxic substances. EPA has significant responsibilities under amendments to the Toxic Substances Control Act (TSCA) to ensure the safety of chemicals in or entering commerce and addressing unreasonable risks to human health or the environment. Chemicals and toxic substances are ubiquitous in our everyday lives and are often released into the environment from their manufacture, processing, use, or disposal. EPA's work in managing chemical safety and toxic substances is particularly important to vulnerable populations, including low-income, minority, and indigenous populations, as well as children, who may be disproportionately affected by, and particularly at risk from, exposure to chemicals.

Based on five years of implementing TSCA since enactment of the bipartisan Lautenberg Act, the Agency has determined that additional FTE are required to increase the capacity of the Program to address the heavy workload associated with chemical risk evaluations and risk management to better support the Agency's ability to meet statutory mandates. Increased funding for the TSCA Program is needed in FY 2024 to advance implementation of the law's requirements. While the Program received additional funding in FY 2023, the full request of \$131 million is needed in FY 2024, else achieving the TSCA goals will be a challenge. The FY 2024 Budget for TSCA implementation supports over 535 FTE with appropriated resources and represents a \$47.9 million increase over the FY 2023 enacted level. EPA will continue to emphasize quality of work, adherence to statutory intent and timelines applicable to pre-market review of new chemicals, chemical risk evaluation and management, data development and information collection, and review of Confidential Business Information (CBI) claims.

The Agency also has significant responsibility under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to screen new pesticides before they reach the market and ensure that pesticides already in commerce are safe. In addition, EPA is responsible for complying with the Endangered Species Act (ESA) and ensuring that federally endangered and threatened species are not harmed as a result of the use of pesticides. Endangered species risk assessments involve consideration of risks for approximately 1,200 active ingredients in more than 17,000 pesticide products to the more than 1,600 listed endangered species and 800 designated critical habitats in the United States. Given the complexity of evaluating potential effects to diverse listed species under ESA, EPA has been subject to numerous litigation challenges for registration and registration review actions. To continue making progress toward meeting ESA mandates in FY 2024, EPA requests an additional \$27 million and 22.5 FTE to provide a total of \$77.7 million and 282 FTE for the Pesticides: Protect the Environment Program. The Agency's Budget also provides \$29 million and 69.2 FTE for the Pollution Prevention Program to support businesses, states, tribes, and other partners to promote and facilitate the adoption of approaches to improve multimedia environmental conditions and climate impacts through reductions in pollutants and other hazardous materials. In this Program, \$7.9 million and 9 FTE is provided to a new grant program to help small businesses transitioning to TSCA compliant practices to mitigate economic impacts.

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As part of the President's commitment to tackling PFAS pollution, the Budget provides approximately \$170 million for EPA to continue working toward commitments made in the 2021 PFAS Strategic Roadmap, including: increasing our knowledge of PFAS impacts to human health and ecological effects; restricting use to prevent PFAS from entering the air, land, and water; and remediating PFAS that have been released into the environment.

Ensure Scientific Integrity and Science-based Decision Making

Delivering rigorous scientific research and analyses to guide the Agency's policy and regulatory process and inform evidence-based decision making is one of EPA's cross-agency strategies. Scientific and technological information, data, and evidence-based decision making are central to the development and iterative improvement of sound policies and to the delivery of effective and equitable programs. Environmental challenges in the 21st century are increasingly complex. For example, the interplay between air quality, climate change, and emerging energy options requires new approaches and solutions than those used in the past. These solutions require research that transcends disciplinary lines and involve EPA regions and programs working together with tribal, state, and local partners, stakeholders, and communities.

The FY 2024 Budget includes \$643 million and 1,868 FTE for EPA's Office of Research and Development (ORD). EPA requests an increase of \$37.4 million and 34.7 FTE to the Air, Climate, and Energy Research Program, which will substantially advance research to assess the impacts of climate change on human health and ecosystems. EPA also requests an increase of \$11.3 million and 28.5 FTE to the Chemical Safety for Sustainability Research Program, which will be focused on modernizing the chemical toxicity and assessment process and incorporating scientific advances in new chemical evaluations under TSCA. This funding will lead to the development and translation of science to inform regulatory and policy decisions by the Agency and external partners that increase access to clean and safe air, land, and water for all communities across the Nation.

Continue to Restore EPA's Core Capacity

Ensuring the Agency has the work force it needs to carry out its mission to protect clean air and water, tackle the climate crisis, and promote environmental justice is essential. The Budget adds more than 1,960 Full Time Equivalents (FTEs) relative to 2023 levels, for a total of more than 17,000 FTEs, to help rebuild the Agency's capacity. This FTE level remains below EPA's workforce for much of the 1990s and early 2000s, while today the Agency faces a growing workload and set of statutory responsibilities. Restoring staffing capacity across the Agency would enable EPA to better protect our Nation's health by helping cut air, water, and climate pollution and advancing environmental justice. EPA strives to provide modern and efficient workforce services and serve as a model for diversity, equity, inclusion, and accessibility. In FY 2024, the Agency will continue to support this goal by providing funding to enhance diverse hiring practices, expand EPA's intern program, and strengthen agency-wide capacity to increase staff levels in key offices and programs. Effective workforce management is critical to EPA's ability to accomplish its mission. EPA's efforts in human resource functions are focused on strengthening the workforce, retaining critical expertise, and capturing institutional knowledge. EPA continues developing

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mechanisms to ensure that employees have the right skills to successfully achieve the Agency's core mission today and in the future.

The FY 2024 Budget provides the funding needed for critical Agency infrastructure that all programs require to maintain operations and meet various mandates. In FY 2024, EPA funds new and rising costs to adequately fund mission support functions across EPA programs and regional offices, including Diversity, Equity, Inclusion and Accessibility (DEIA) and data management, and support agency-wide implementation of OMB and DHS cybersecurity mandates. In FY 2024, EPA will continue to implement the actions identified in the Agency's DEIA Strategic Plan. This includes working to ensure that Agency recruitment, hiring, promotion, retention, professional development, performance evaluations, pay and compensation policies, reasonable accommodations access, and training policies and practices are equitable.

The FY 2024 Budget also provides robust support for implementation of the Foundations for Evidence-Based Policymaking Act of 2018. EPA has embarked on a multi-year effort to strengthen how the Agency identifies, prioritizes, and undertakes evidence-building activities and develops evidence-building capacity to inform its policies and decisions, consistent with the Evidence Act. An additional \$6.4 million and 7.2 FTE above the FY 2023 enacted level is included for evaluation work to support implementation of the Evidence Act. The FY 2024 Budget will continue to promote program evaluation as an essential component of federal evidence building. This effort will advance an evaluation culture through a bottom-up approach and increase agency-wide engagement in program evaluation. By restoring EPA's core capacity and ensuring that mission support services are adequately funded, the FY 2024 Budget will enable the Agency to carry out its mission effectively while being a good steward of federal resources.

In FY 2024, the Agency will continue to reconfigure its workplaces to ensure the physical footprint can accommodate a growing and increasingly hybrid workforce. For example, EPA will continue the space optimization projects at the Agency's laboratories in Ada, Oklahoma, Athens, Georgia, and Corvallis, Oregon to achieve potential long-term cost and energy savings. EPA will consider all opportunities for supporting the future of work, in line with OMB Memoranda M-21-25, including the potential for releasing underutilized space or sharing with other federal agencies, investing in facility enhancements to assess utilization and inform future consolidations or releases, and converting workspaces to support hoteling and hybrid collaboration. In FY 2024, the Budget includes additional resources in the Buildings and Facilities account to pursue critical and backlogged repairs and improvements across EPA, initiate and complete climate resiliency and sustainability projects across EPA-owned facilities, and invest in cutting edge EPA lab facilities, including to support PFAS research.

Support for the Cancer Moonshot

Reducing exposure to environmental contaminants that are known or suspected to cause cancer is embedded in much of EPA's programmatic work. EPA uses cancer incidence as one of the indicators in its Report on the Environment¹⁹ to help answer questions relating to trends in the condition of the Nation's air, water, and land. To support the Administration's Cancer Moonshot initiative, EPA will renew focus on its scientific research and regulatory agenda in FY 2024 to

¹⁹ For more information, please visit: <https://www.epa.gov/report-environment/learn-about-roe-program>.

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better prevent and mitigate cancer-related exposure. The Agency will accomplish this work with a focus on addressing environmental injustice, disparity, and inequities in prevention of and exposure to environmental hazards that can cause cancer. Below are some examples of EPA's work in FY 2024 to support this important initiative.

- *Research to Understand and Address Environmental and Toxic Exposures.* EPA conducts extensive assessments on chemical hazards related to cancer outcomes and has developed a variety of tools for evaluating health hazards posed by chemicals.^{20,21,22} These programs provide toxicity information and toxicity values for contaminants of concern and have formed the scientific foundation for many of EPA's air and water quality standards and the Superfund Program.
- *Risk Evaluations of Toxic Substances and Pesticides.* In FY 2024, EPA will continue to conduct TSCA risk evaluations on new and existing chemicals to determine if they present an unreasonable risk to human health and the environment. The Agency has authority to order manufacturers to provide information on a chemical's carcinogenicity. In addition, the Pesticide Programs generates an annual list of cancer classifications for all pesticides.
- *Air Toxics and Radon.* EPA implements programs to improve air toxics data, characterize potential cancer risk, and issue regulations to lower emissions and reduce health risk for people across America. The FY 2024 Budget will continue to support work for air toxics and address emerging issues and likely carcinogens such as PFAS. EPA will also continue its efforts to prioritize strategies to reduce radon risk in underserved communities.
- *Drinking Water Regulations Aimed at Reducing Cancer Risks.* The National Primary Drinking Water Regulations include primary standards and treatment techniques for drinking water that remove carcinogens and prevent cancer cases. The PFAS drinking water regulation may prevent additional cancer cases since PFAS exposure is associated with increased risk of prostate, kidney, and testicular cancers. The FY 2024 Budget will continue to support efforts to finalize the PFAS Rule.
- *Remediation at Superfund Sites to Reduce Exposure to Harmful Contaminants.* EPA's Superfund Program cleans up contaminated land to reduce human exposures to harmful contaminants that lead to greater risk for cancer and other health complications. In FY 2024, EPA will continue to oversee federal agencies and facilities cleanup, including Department of Defense PFAS cleanup under CERCLA.
- *Childhood Cancer Prevention.* In FY 2024, EPA will continue to help prevent childhood cancer by expanding the education provided to health care providers, parents, and communities about how to identify cancer clusters, key exposures to carcinogens, and the relationship between environmental exposures and childhood cancer or cancer due to exposures in childhood.

²⁰ For more information, please visit: <https://www.epa.gov/iris>.

²¹ For more information, please visit: <https://www.epa.gov/pprtv/basic-information-about-provisional-peer-reviewed-toxicity-values-pprtvs#basicinfo>.

²² For more information, please visit: <https://www.epa.gov/isa>.

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Supplemental Funding

Resources in the FY 2024 Budget are complemented by the supplemental funding provided under the landmark Infrastructure Investment and Jobs Act (IIJA) and the transformative Inflation Reduction Act (IRA).

Infrastructure Investment and Jobs Act (IIJA)

The bipartisan IIJA makes historic investments in tackling climate change, protecting public health, creating jobs in communities across the country, and delivering a more equitable future. The IIJA appropriated to EPA approximately \$60 billion over a five-year period from FY 2022 through FY 2026. In FY 2024, \$11.6 billion of IIJA funding will be available to EPA for upgrading drinking water and wastewater infrastructure, replacing lead pipes, addressing emerging contaminants such as PFAS, protecting critical water bodies, cleaning up longstanding pollution at Superfund and brownfields sites, making improvements to waste management and recycling systems, decarbonizing the Nation's school bus fleet, and advancing the Pollution Prevention Program. The IIJA also invests in strengthening the work of our tribal and state partners and helping create good-paying jobs and increasing climate resilience throughout the country.

Inflation Reduction Act (IRA)

The IRA appropriated \$41.5 billion for EPA over the next decade to reduce harmful air pollution in places where people live, work, play, and go to school. With these resources, EPA will target climate change and harmful air pollution while supporting the creation of good jobs and lowering energy costs for families. The Agency will accelerate work on environmental justice and empower community-driven solutions in overburdened neighborhoods by dedicating resources specifically for environmental and climate justice efforts in underserved and overburdened communities. The IRA also contains funding for various grants to assist state, local, and tribal governments with creating their own such programs to address issues affecting their homes.

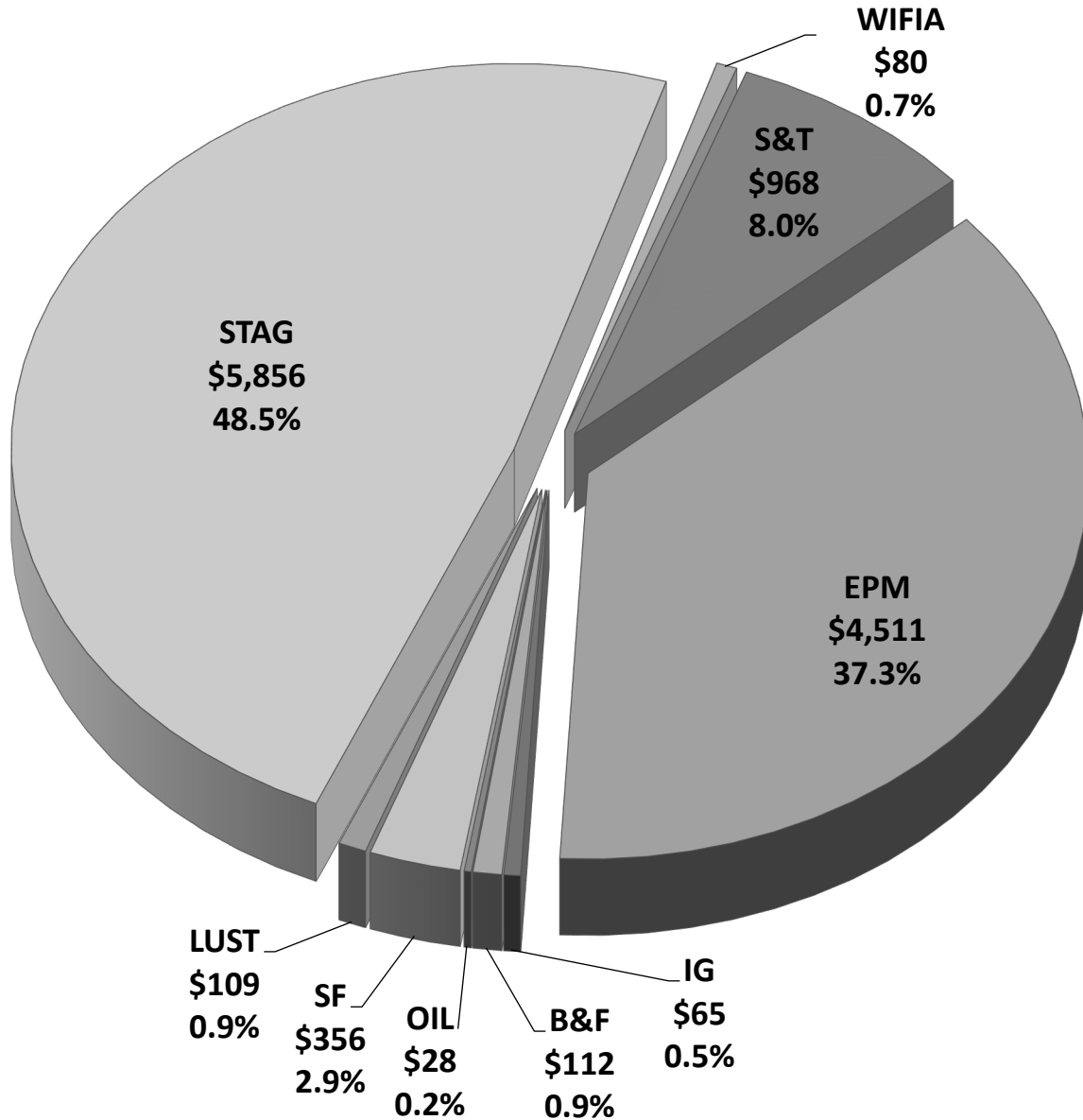
Allocating Resources to Strategic Goals and Objectives

In accordance with the Government Performance and Results Act of 1993 (GPRA) and the GPRA Modernization Act of 2010, the FY 2024 Budget identifies resources aligned with the strategic goals and objectives of the Agency's *FY 2022 – 2026 EPA Strategic Plan*. The Budget also allocates agency-wide mission and science support resources and FTE across the goals and objectives. These resources provide support for multiple goals to achieve their objectives. This support involves the provision of foundational agency-wide and cross-agency research and development, science, and essential mission assistance services by the EPA Offices of the Administrator (OA), Chief Financial Officer (OCFO), General Counsel (OGC), Inspector General (OIG), Mission Support (OMS), and Research and Development (ORD). The resource summaries by Strategic Goal and Objective within this Submission provide the total of both direct and allocated resources.

Summary Resource Charts

***U.S. Environmental Protection Agency's
FY 2024 Budget by Appropriation***

***Total Agency: \$12,083 M
(Dollars in Millions)***

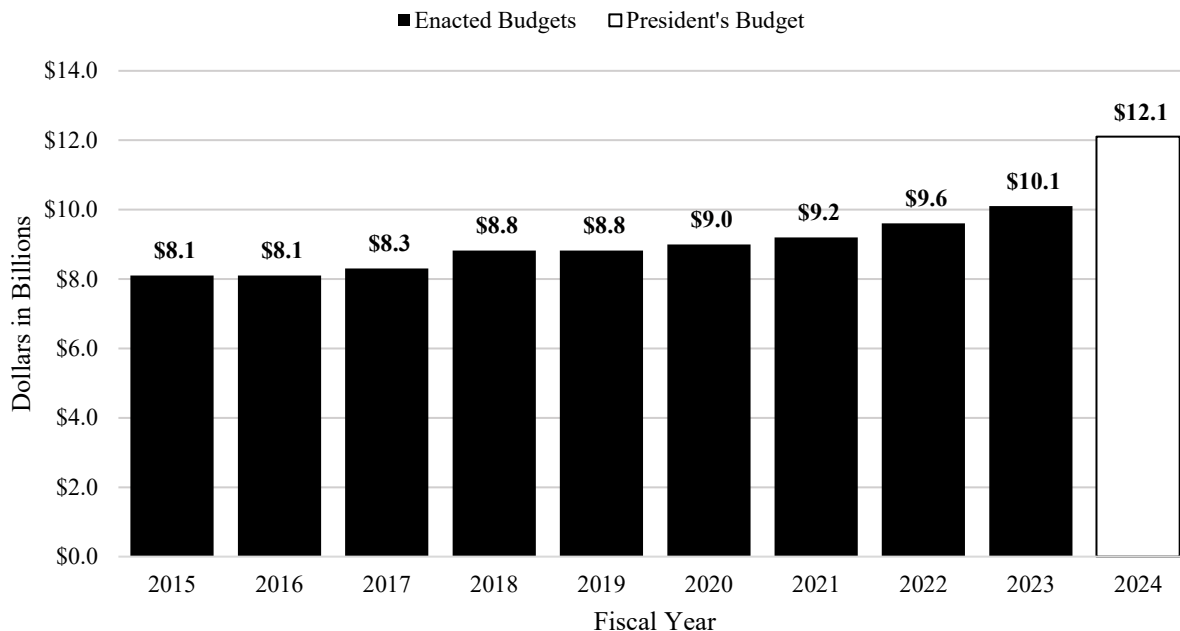


■ Science & Technology (S&T)	■ Environmental Programs & Management (EPM)
■ Inspector General (IG)	■ Buildings & Facilities (B&F)
■ Inland Oil Spill Programs (OIL)	■ Hazardous Substance Superfund (SF)
■ Leaking Underground Storage Tanks (LUST)	■ State & Tribal Assistance Grants (STAG)
■ Water Infrastructure Finance & Innovation Program (WIFIA)	

1. Excludes supplemental funding.
2. In addition to annual appropriated resources, the agency expects to receive an estimated \$2.5 billion in Superfund tax receipts in FY 2024 not reflected here. These additional government revenues will support continued Superfund cleanup and enforcement.

Summary Resource Charts

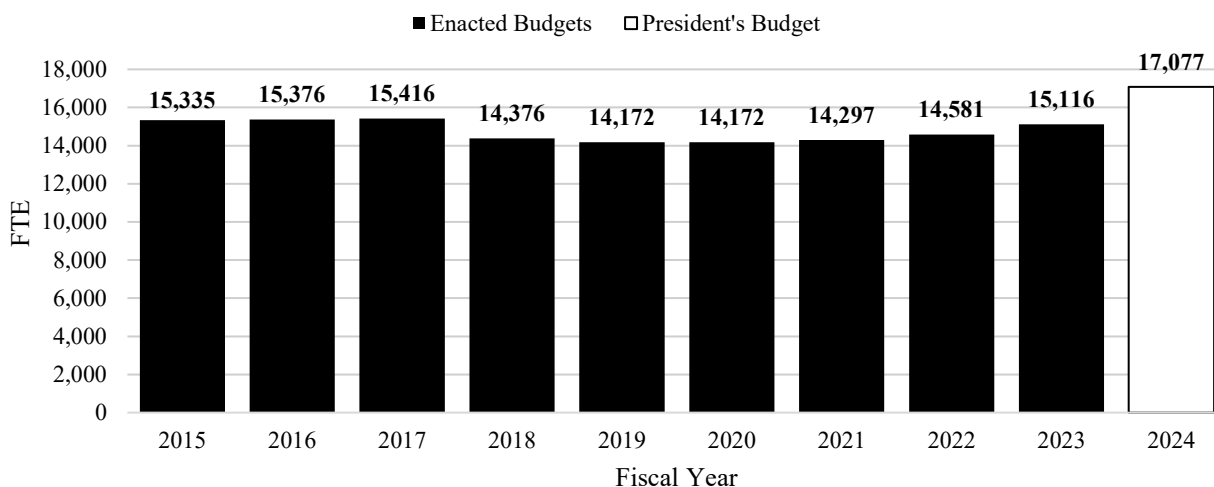
EPA's Budget FY 2015 to 2024



Notes:

1. All agency totals include applicable rescissions.
 2. FY 2020 Enacted excludes the Coronavirus Aid, Relief, and Economic Security Act.
 3. FY 2021 Enacted excludes the American Rescue Plan Act.
 4. FY 2022 and FY 2023 Enacted exclude the Infrastructure Investment and Jobs Act.
- Resources correspond to the resource levels included in each year's Enacted Operating Plan, except for FY 2024, which is the requested level.

EPA's FTE Ceiling History FY 2015 to 2024



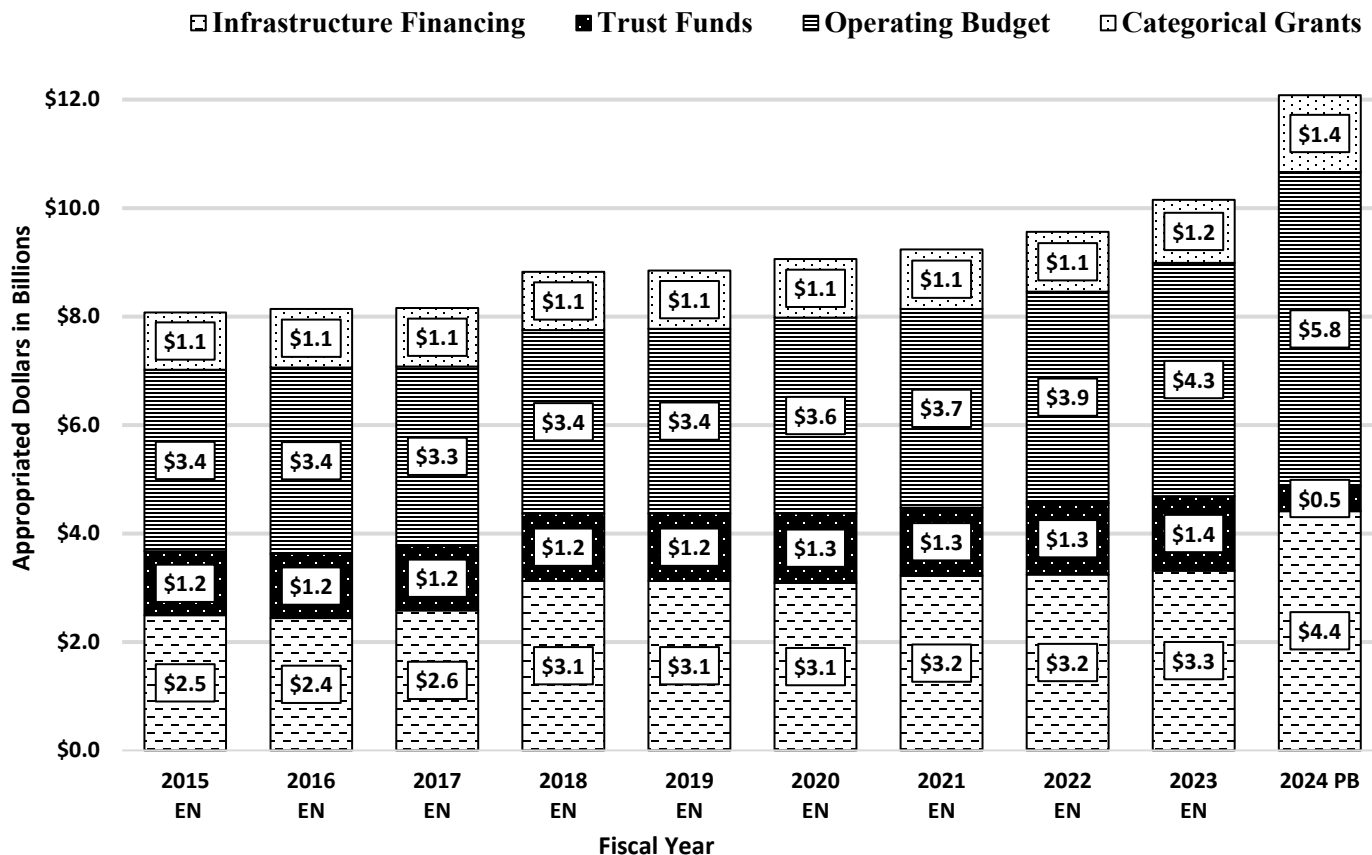
Notes:

1. FTE (Full Time Equivalent) = one employee working full time for a full year (52 weeks x 40 hours = 2,080 hours), or the equivalent number of hours worked by several part-time or temporary employees.
 2. Reimbursable FTE are included.
 3. FY 2022 and FY 2023 Enacted exclude the Infrastructure Investment and Jobs Act.
- Resources correspond to the resource levels included in each year's Enacted Operating Plan, except for FY 2024, which is the requested level.

Summary Resource Charts

EPA's Resources by Major Category

(Dollars in Billions)



EN - Enacted, PB - President's Budget

Notes:

1. Totals may not add due to rounding.
2. Infrastructure Financing includes Clean Water SRF, Drinking Water SRF, STAG Special Programs, and WIFIA funding.
3. FY 2015 Enacted reflects a \$40 M rescission.
4. FY 2016 Enacted reflects a \$40 M rescission.
5. FY 2017 Enacted reflects a \$90 M rescission.
6. FY 2018 Enacted reflects a \$149 M rescission.
7. FY 2019 Enacted reflects a \$211 M rescission.
8. FY 2020 Enacted excludes the Coronavirus Aid, Relief, and Economic Security Act.
9. FY 2021 Enacted reflects a \$28 M rescission and excludes the American Rescue Plan.
10. FY 2022 and FY 2023 Enacted exclude the Infrastructure Investment and Jobs Act and the Inflation Reduction Act.
11. FY 2023 Enacted reflects a \$13 M rescission.
12. In addition to annual appropriated resources, the agency expects to receive an estimated \$2.5 billion in Superfund tax receipts in FY 2024 not reflected here. These additional government revenues will support continued Superfund cleanup and enforcement.

Cross-Agency Strategies

Cross-Agency Strategy 1: Ensure Scientific Integrity and Science-Based Decision Making

Deliver rigorous scientific research and analyses to inform evidence-based decision making.

EPA's ability to protect human health and the environment depends on the integrity and quality of the information, data, and evidence that secure the scientific foundation for Agency decision making. Identifying and implementing effective strategies, including strategies to adapt to the changing climate, advance environmental justice and equity, and protect children at all life stages, require that decisions be grounded in the best available science and evidence. EPA's Cross-Agency Strategy 1 in the *FY 2022 – 2026 EPA Strategic Plan* will strengthen scientific integrity, advance the delivery of rigorous and independent scientific evaluation and analyses, and ground EPA's actions in the best available science.

Cross-Agency Strategy 1, Ensure Scientific Integrity and Science-Based Decision Making is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, increase the annual percentage of Office of Research and Development (ORD) research products meeting partner needs to 95% from a baseline of 93% in FY 2021.¹
- By September 30, 2026, implement 126 actions for scientific integrity objectives that are certified by Deputy Scientific Integrity Officials in each EPA program and region.

Science touches all parts of EPA and plays an integral role in informing a range of environmental decisions. EPA program and regional offices support this strategy through a commitment to science as foundational to decision making, scientific integrity, rigorous quality assurance, appropriate peer review, the timely release of scientific information, and transparency in decision making.

As part of this commitment, the Agency will ensure an effective scientific integrity program. Scientific integrity results from adherence to professional values and practices when conducting, communicating, supervising, and developing and implementing science. It ensures objectivity, clarity, reproducibility, and utility, and it safeguards against bias, fabrication, falsification, plagiarism, outside interference, censorship, and inadequate procedures and information security. EPA will advance and strengthen a culture of scientific integrity across the Agency by ensuring adherence to the scientific and ethical standards outlined in EPA's Scientific Integrity Policy. To support employees, contractors, and officials, EPA will provide Agencywide training on scientific integrity. Employees, contractors, and officials have access to the Scientific Integrity Official and staff and a network of Deputy Scientific Integrity Officials on whom they can rely for advice or to report allegations of a loss of scientific integrity.²

¹ ORD is tracking environmental justice and climate products as annual performance goals. Please see the annual performance plan table in the President's Budget (<https://www.epa.gov/planandbudget/cj>) for more information.

² The Foundations for Evidence-Based Policymaking Act of 2018 promotes a culture of evaluation and continuous learning that ensures agency decisions are made on the best available evidence including developing an Evaluations and Other Evidence-Building Activities Policy (Evaluation Policy). EPA's Evaluation Policy includes many elements that are related to EPA's Scientific Integrity Policy including principles of independence, objectivity, transparency, and rigor. Please see (<https://www.epa.gov/system/files/documents/2022-05/epa-evaluation-evidence-building-policy.pdf>) for more information.

Cross-Agency Strategies

EPA's research and science programs support this strategy through the delivery of rigorous scientific research and analyses. The primary mission of the Agency's Office of Research and Development and Regional Lab Enterprise is to provide leading-edge research to meet near-term and long-term science needs of the Agency and inform EPA decisions. This research portfolio also supports the emerging needs of tribal, state, and community partners. Scientific research and development will support: 1) tackling the climate crisis by addressing the causes and consequences of climate change and developing more resilient communities; 2) addressing current, emerging, and long-term water resource challenges; 3) developing scientific and technical approaches to enhance the Agency's ability to evaluate chemicals and their risks; 4) accelerating the pace of cleanups at contaminated sites so they can be returned to beneficial use; 5) revitalizing and protecting the most vulnerable communities and groups; and 6) conducting environmental risk assessments to better inform policies for protecting human health, particularly for children at all life stages. The Agency's regional laboratories provide essential expertise and scientific data for a wide array of media needed to make local decisions. In FY 2024, regional laboratories will analyze scientific data to inform immediate and near-term decisions on environmental conditions, emergency response, compliance, and enforcement.

In FY 2024, the Agency will continue critical research on the highest priority issues. EPA will focus on addressing lead issues associated with the Superfund and childhood lead exposure. The Agency also will continue to emphasize per- and polyfluoroalkyl substances (PFAS) research to increase understanding of PFAS exposures, human health and ecological effects, and technologies for reducing PFAS in the environment. In addition, the Agency will continue to advance the Administration's science-based approach to improve wildfire readiness by enhancing wildfire data and communications related to air quality and helping communities become "smoke ready."

Cross-Agency Strategies

Cross-Agency Strategy 2: Consider the Health of Children at All Life Stages and Other Vulnerable Populations

Focus on protecting and improving the health of children at all life stages and other vulnerable populations in implementing our programs.

EPA's programs will apply and promote the use of science, policy, partnerships, communications, and action to protect children at all life stages and other vulnerable populations from adverse health effects resulting from exposure to pollution and the impacts of climate change. EPA also will take actions to protect children and other vulnerable populations in underserved communities where socioeconomic determinants of health exacerbate the harm caused by these environmental stressors.

Children's environmental health refers to the effect of the environment on children's growth, wellness, development, and risk of disease. EPA actions will be informed by two important considerations: first, the scientific understanding of childhood as a sequence of life stages, and second, the recognition that protecting children's health is necessary to protect human health, because every adult was once a child. The effects of early life exposures may become apparent during childhood or may not arise until adulthood or in later generations.

Cross-Agency Strategy 2, Consider the Health of Children at All Life Stages and Other Vulnerable Populations is directly supported by the following long-term performance goal in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, assess and consider environmental health information and data for children at all life stages for EPA actions that concern human health.³

To best protect children's environmental health at all life stages and vulnerable populations, EPA will identify, assess, develop, and promote the use of science to support its policies, decisions, and actions, including regulations and voluntary programs. EPA also will ensure that Agency toxicity, exposure, and risk assessments consider all relevant and available science to address the unique vulnerabilities of children and vulnerable populations, including disproportionate impacts related to race, ethnicity, income, existing health problems, or other social determinants of health.

In FY 2024, EPA's Children's Health Program will continue its core work to:

- Coordinate and advance the protection of children's environmental health across EPA by assisting with development of regulations, improving risk assessment and science policy, implementing community-level outreach and education programs, and tracking indicators of progress on children's health.
- Coordinate two plenary meetings of the Children's Health Protection Advisory Committee,⁴ including delivery of expert responses to additional charge questions related to high priority children's environmental health issues.
- Tackle the climate crisis and advance environmental justice by following up on recommendations from the National Academy of Sciences, which highlighted the latest

³ Changed from "By September 30, 2026, assess and consider environmental health information and data for children at all life stages for all completed EPA actions that concern human health."

⁴ For additional information, please visit: <https://www.epa.gov/children/chpac>.

Cross-Agency Strategies

scientific advancement and challenges to protecting children's health, and continue to implement the *2021 Policy on Children's Health* to ensure that EPA consistently and explicitly considers early life exposures and lifelong health in all human health decisions.⁵

- Support health care professionals via the Pediatric Environmental Health Specialty Units to better address risks from childhood exposures, particularly in communities with environmental justice concerns.
- Partner with the Department of Health and Human Services to lead the cross-federal President's Task Force on Environmental Health Risks and Safety Risks to Children.⁶

To continue to implement Executive Order (EO) 13045: *Protection of Children from Environmental Health Risks and Safety Risks* in FY 2024 EPA also will:

- Support the EPA Administrator to convene the President's Task Force on Environmental Health Risks and Safety Risks to Children. The focus of this work will be on protecting children from adverse consequences of climate change and disasters, addressing disparities in asthma among children, and reducing childhood lead poisoning.
- Take actions to protect children in underserved communities who suffer disproportionately from the effects of pollution exposures exacerbated by socio-economic determinants of health.

⁵ For additional information, please visit: <https://nap.nationalacademies.org/catalog/25466/vibrant-and-healthy-kids-aligning-science-practice-and-policy-to>.

⁶ For additional information, please visit: <https://ptfcehs.niehs.nih.gov/>.

Cross-Agency Strategies

Cross-Agency Strategy 3: Advance EPA's Organizational Excellence and Workforce Equity

Foster a diverse, equitable, and inclusive workforce within an effective and mission-driven workplace.

To support its mission to protect human health and the environment, EPA will make significant progress in FY 2024 to advance organizational excellence and workforce equity. The Agency will strengthen workforce planning of mission-critical positions and support succession management for the next generation of workers while emphasizing diversity, equity, inclusion, and accessibility (DEIA). EPA will modernize information technology systems, enhance the physical workplace for a hybrid workforce, support employee-friendly work policies, and transition to a paperless work environment. EPA will focus on implementing efficient and effective processes across the full range of Agency efforts, utilizing proven continuous improvement techniques and training to equip staff to solve problems and enhance our ability to accomplish our mission. Additionally, EPA will continue to safeguard against cybersecurity risks to protect Agency assets and infrastructure from potentially malicious attacks. Further, EPA will be a leader in the federal government in advancing the sustainability of facilities and operations while developing resiliency to respond to the risks of climate change. EPA will eliminate barriers to its procurement processes through greater diversification of the Agency's vendor base, increasing engagement and technical assistance, and enhancing the Agency's contracts with new vendors, including with small and underserved businesses and targeting businesses located in Historically Underutilized Business Zones (HUBZones).⁷ EPA will continue to provide resource stewardship to ensure that all agency programs operate with fiscal responsibility and management integrity, financial services are efficiently and consistently delivered nationwide, and programs demonstrate results.

Cross-Agency Strategy 3, Advance EPA's Organizational Excellence and Workforce Equity is directly supported by the following long-term performance goals in the FY 2022 – 2026 EPA Strategic Plan:

- By September 30, 2026, EPA will achieve the highest Diversity, Equity, Inclusion and Accessibility (DEIA) Maturity Level of "Leading and Sustaining" as defined by the November 2021 *Government-wide Strategic Plan to Advance DEIA in the Federal Workforce* and achieve all EPA goals identified in the Agency's Gender Equity and Equality Action Plan.
- By September 30, 2026, improve 1,000 operational processes.
- By September 30, 2026, initiate all priority climate resiliency projects for EPA-owned facilities within 24 months of a completed facility climate assessment and project prioritization.
- By September 30, 2026, EPA will be in full compliance with the five high-priority directives in Executive Order 14028 - *Improving the Nation's Cybersecurity*.
- By September 30, 2026, award 4% of EPA contract spending to small businesses located in HUBZones compared to the FY 2018-2020 average annual baseline of 2.2%.
- By September 30, 2026, automate the major EPA permitting programs.

⁷ For additional information, please consult the Small Business Administration's HUBZone Program webpage: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

Cross-Agency Strategies

- By September 30, 2026, automate all priority internal administrative processes.

In FY 2024, EPA will continue to implement the Agency's DEIA Plan to advance progress towards recruiting and maintaining a workforce representative of the American public that promotes a culture of inclusion and accessibility within the Agency. By the end of FY 2024, EPA will have achieved at least the Level 2: Advancing Outcomes maturity level as defined by the November 2021 Government-wide Strategic Plan to Advance DEIA in the Federal Workforce.⁸

In FY 2024, EPA will make progress towards equity goals by eliminating barriers in its procurement processes and increasing the amount of spending on small and disadvantaged businesses. EPA will provide technical assistance to small business vendors on navigating federal contracting requirements and ensure that new EPA procurements are accessible in scope and requirements for small businesses to successfully compete. This work will yield an increase in contract spending awarded to small and disadvantaged businesses, including those located in HUBZones.

In FY 2024, EPA will continue to implement its Future of Work plans that will re-envision both the workforce and the physical workspace of the Agency. Activities will include modernization and transformation of collaborative spaces across several Agency facilities to encourage seamless engagement of a hybrid workforce, leveraging the latest collaboration and productivity IT tools and software, and a continued investment in IT infrastructure to sustain the increase in telework, remote work, and operational readiness. Additionally, EPA will continue to manage flexible workforce policies and procedures that maximize productivity to support a hybrid workforce and enable EPA to be a model employer.

In FY 2024, EPA will continue to pursue information technology systems and infrastructure modernization, innovation, and automation of internal administrative forms and processes to achieve a paperless work environment. To support the Agency's Cybersecurity posture, EPA will continue to accelerate cloud adoption. In addition, EPA will continue to increase adoption of Multifactor Authentication, encryption for Agency systems and data, adoption of a Zero Trust Architecture, and meeting advanced logging requirements to accomplish Executive Order (EO) 14028: *Improving the Nation's Cybersecurity*.

In FY 2024, in support of EO 14008: *Tackling the Climate Crisis at Home and Abroad*, EPA will conduct climate resiliency assessments at six EPA-owned facilities. These assessments will include identifying potential projects the Agency can implement to increase facility resiliency against the impacts of climate change, such as roofing stability, building envelope, and emergency power projects. Following completion of a climate assessment, EPA will initiate high-priority projects within 24 months. Further, EPA will continue progress towards achieving carbon-pollution free energy use and net-zero emissions in line with Administration sustainability goals.

In FY 2024, the Agency will continue to modernize its financial systems to gain greater efficiencies by improving accounting systems and retiring legacy systems. OCFO is evolving duplicative and manual work by automating and modifying business processes and enhancing the ability to

⁸ For more information, please refer to: <https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf>.

Cross-Agency Strategies

generate automated reports. Robotics Process Automation will be a part of the overall strategy to reduce manual work, decrease error, and improve efficiency. In FY 2024, EPA will continue to expand and enhance easy to use dashboards to manage resources and track performance. Adopting Treasury's Invoice Processing Platform and G-Invoicing solution (for interagency agreements) will further standardize processes and allow for retirement of legacy administrative systems. Additionally, the Agency will leverage senior staff engagement in continuous improvement through nearly 100 executive-sponsored improvement projects annually. EPA is also applying continuous improvement tools and initiatives to support IJA implementation with an emphasis on improving processes related to hiring and grants.

In FY 2024, EPA will collaborate with the Agency's major permitting programs to establish the target number of permit processes to be automated.⁹ Automation of permit processes will reduce processing time on issuing permits, decrease the time between receiving monitoring data and engaging in enforcement actions, and foster transparency by allowing communities to search, track, and access permitting actions easily. Further, permit automation will enable the integration of climate change and environmental justice considerations into permit processes and ensure that they are addressed within the terms and conditions of the permit. For the regulated community, permit automation will allow for a simplified, streamlined, and transparent permitting process that will result in time and costs savings. For communities and stakeholders, permit automation can empower communities, especially communities with environmental justice concerns, to actively participate in the permit decision-making process and post-permit related compliance.

⁹ Broad statutory frameworks for the permitting programs are found in Sections 165, 173, and 502 of the Clean Air Act (42 U.S.C. §§ 7475, 7503, and 7661a); Section 402 of the Clean Water Act (33 U.S.C. § 1342); Section 3006 of the Resource Conservation and Recovery Act (42 U.S.C. § 6926), and Section 1422 and Section 1425 of the Safe Drinking Water Act (42 U.S.C. §§ 300h and 300h-4).

Cross-Agency Strategies

Cross-Agency Strategies

Cross-Agency Strategy 4: Strengthen Tribal, State, and Local Partnerships and Enhance Engagement

Collaborate and engage effectively with Tribal Nations in keeping with the Federal Government's trust responsibilities, state and local governments, regulated entities, and the public to protect human health and the environment.

Protecting human health and the environment is a shared responsibility of EPA and its tribal, state, and local government partners. With tribal governments, EPA also has a historic and fundamental trust responsibility. Environmental outcomes are best achieved through collaborative and effective partnerships across all levels of government, successful oversight of federally delegated programs, and robust engagement with non-governmental organizations, national and community groups, stakeholders, and the public, built on a foundation of public trust and transparency, including through timely responses to information requests. Through a renewed focus on fostering intergovernmental relationships, improving on-the-ground community engagement, delivering high-impact environmental education programs, and increasing public trust and transparency, EPA will forge stronger partnerships. As a result, EPA will be better positioned to advance durable solutions to its most pressing challenges and ensure the equitable protection of all communities, including those who have historically been underserved and overburdened.

Cross-Agency Strategy 4, Strengthen Tribal, State, and Local Partnerships and Enhance Engagement is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, consider tribal treaty rights as part of all EPA tribal consultations that may affect tribal treaty rights.
- By September 30, 2026, eliminate the backlog of overdue Freedom of Information Act (FOIA) responses, compared to the FY 2021 baseline of 1,056.

In light of the disproportionate impact of environmental pollution on Native Americans, EPA is committed to strengthening its Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations. EPA will strive to meet its federal trust responsibility and work to integrate consideration of tribal treaty and reserved rights early into decision making and regulatory processes.

The early, meaningful, and substantial involvement of EPA's co-regulator partners is critical to the development, implementation, and enforcement of the Nation's environmental programs. With a renewed focus on climate, environmental justice, and children's health, EPA will emphasize frequent and early communication as a keystone of its partnership with tribal and state co-regulators, since EPA must thoughtfully consider their concerns and existing regulatory programs to develop effective and lasting solutions to our most pressing environmental challenges.

In FY 2024, EPA will continue to support the Agency's web-based tribal Consultation Opportunities Tracking System, a publicly accessible database used to communicate upcoming and current EPA consultation opportunities to tribal governments. The system provides a management, oversight, and reporting structure that helps ensure accountability and transparency.

Cross-Agency Strategies

In addition, EPA will update key policies and guidances related to overseeing states' implementation of federal environmental programs. These updates are intended to strengthen and improve the Agency's oversight of federally delegated environmental programs.

In FY 2024, EPA will continue to enhance transparency, build public trust in Agency actions, and support public participation by strengthening its implementation of the Freedom of Information Act (FOIA). EPA will improve its processing of FOIA requests, in particular, to address the increasing complexity and volume of electronic documents required to be searched, collected, and reviewed when responding to FOIA requests. The Agency will work to increase processing speed and to apply appropriate technologies to ensure it supports the timely searching and collection of information for purposes of responding to FOIA requests and other information needs in a cost-effective and sustainable manner. In addition, EPA will procure and prepare to launch a new FOIA recordkeeping and processing software solution to replace FOIAonline at the beginning of FY 2024.

Goal and Objective Overviews

Goal 1: Tackle the Climate Crisis

Cut pollution that causes climate change and increase the adaptive capacity of tribes, states, territories, and communities.

Introduction

Climate change is a global issue that has far-reaching human health, social, economic, and biodiversity impacts on our planet. It directly and adversely affects the United States. Climate change is accelerating the frequency and severity of wildfires and extreme weather events, such as hurricanes, floods, heat waves, and drought, and is altering sea temperature, ocean acidity, sea-level, and other global systems that support human life and biodiversity. Climate change impacts include famine, property loss, mass migrations, human conflict, species extinctions, and ecosystem failures, with significant humanitarian, economic and national security implications. Certain communities and individuals are particularly vulnerable to these impacts, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people.

The impacts of climate change challenge EPA's ability to accomplish its mission of protecting human health and the environment because climate change can exacerbate existing pollution problems and environmental stressors. EPA is working with other federal agencies to reduce greenhouse gas (GHG) emissions and increase the climate resilience of the Nation, with a particular focus on protecting and helping disadvantaged communities. Climate change is a global issue, and domestic action must go hand in hand with international leadership. EPA will continue to extend its expertise internationally, while learning from the expertise of others, to help shape and advance international agreements and solutions.

In FY 2024, EPA will drive reductions in emissions that significantly contribute to climate change through regulations on GHGs, climate partnership programs, and support to tribal, state, and local governments. The Agency will accomplish this through the transformative investments in the Inflation Reduction Act (IRA), the bipartisan Infrastructure Investment Jobs Act (IIJA), and our base appropriation, which funds the core operating accounts of the Agency. In FY 2024 and beyond, EPA will ensure its programs, policies, regulations, enforcement and compliance assurance activities, and internal business operations consider current and future impacts of climate change. EPA will consult and partner with tribes, states, territories, local governments and communities, businesses, and other federal agencies to strengthen adaptive capacity. By engaging with organizations representing overburdened and underserved communities, EPA will ensure its GHG mitigation and adaptation activities address environmental justice and equity concerns for all communities. Finally, EPA plans to implement international climate engagements that result in an individual partner commitment or action to reduce GHG emissions, adapt to climate change, and improve resilience in a manner that promotes equity. The FY 2024 President's Budget includes \$909.9 million and 1,467.8 FTE for *Goal 1: Tackle the Climate Crisis*. Importantly, this total includes \$5 million for additional administrative support to ensure the sound implementation of the \$27 billion Greenhouse Gas Reduction Fund under the Inflation Reduction Act, which received an administrative set aside of less than half of one percent in that appropriation.

Goal and Objective Overviews

Objective 1.1: Reduce Emissions that Cause Climate Change – *Aggressively reduce the emissions of greenhouse gases from all sectors while increasing energy and resource efficiency and the use of renewable energy.*

The FY 2024 Budget includes \$679.4 million and 965.1 FTE for Objective 1.1. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, promulgate final rules to reduce GHG emissions from light duty, medium-duty, and heavy-duty vehicles; electric utility generating units; and the oil and gas industry.
- By September 30, 2026, EPA's climate partnership programs will reduce expected annual greenhouse gas (GHG) emissions by 545 million metric tons of carbon dioxide equivalent (MMTCO_{2e}). EPA's climate partnership programs reduced 518.6 MMTCO_{2e} of annual GHG emissions in 2019.

In FY 2024, EPA will drive significant reductions in the emissions that cause climate change through regulation of GHGs; climate partnership programs such as ENERGY STAR; support for tribal, state, and local governments; and publication of GHG emissions data. EPA regulations will cut GHG pollutants, including carbon dioxide (CO₂), methane, and HFCs. EPA will collaborate closely with stakeholders to promote energy efficiency, renewable energy, and decarbonization of the Nation's electric grid. By continuing the transition away from reliance on high-emitting fossil fuels, EPA programs will cut GHG emissions from cars, trucks, homes, and businesses.

In the FY 2024 Budget, an additional \$207.2 million and 119.8 FTE is provided to advance the Agency's priority work to mitigate climate change. This includes activities such as issuance of final rules to set new standards for light and medium-duty vehicles, development of a final rule to set new GHG emission standards for Model Year (MY) 2030 and later heavy-duty vehicles, and finalization of rulemakings proposed in FY 2023 under the American Innovation and Manufacturing (AIM) Act.¹ EPA will also finalize standards for new and existing facilities in the oil and gas sector and rules to limit GHG emissions from new and existing sources in the power sector. The additional funding will bolster implementation efforts related to the Agency's GHG rulemakings (e.g., review of state plans to implement the oil and gas or power sector rulemakings). Additional funding also is requested for EPA to update and enhance its infrastructure to track and report on GHG reductions (e.g., revisions to the Greenhouse Gas Reporting Program to require reporting of methane emissions from the oil and gas sector, and enhanced reporting of emissions from other U.S. industrial sectors).

Under the AIM Act of 2020, EPA will work with industry to phase down the production and import of HFCs, which are commonly used in refrigerators, air conditioners, and in many other applications. The AIM Act directs EPA to take steps to sharply reduce production and consumption of these harmful GHG pollutants by using an allowance allocation and trading program. This phasedown will decrease the production and import of HFCs in the United States by 85 percent over the next 15 years. A global HFC phasedown is expected to avoid up to 0.5°C of global warming by 2100. Within the additional request, \$64.4 million and 24 FTE are requested to

¹ For more information on the AIM Act, please visit: <https://www.epa.gov/climate-hfcs-reduction/aim-act>.

Goal and Objective Overviews

implement provisions in the AIM Act to phase down the use of HFCs, to facilitate U.S. entry to the Kigali amendment to the Montreal Protocol, and to restore staff capacity around efforts to tackle the climate crisis. For example, this investment includes resources to implement innovative IT solutions, such as a QR system and database integration across EPA and Customs and Border Patrol to help ensure that the phasedown is not undermined by illegal imports, as has happened in Europe.

EPA finalized robust federal GHG emissions standards for passenger cars and light trucks to secure pollution reductions through Model Year (MY) 2026. In FY 2024, EPA will promulgate a final rulemaking for new multi-pollutant emissions standards, including for GHG emissions, for light- and medium-duty vehicles beginning with MY 2027 and extending through and including at least MY 2030. These standards will help transition the fleet to zero and near-zero emissions. In FY 2024, EPA also will promulgate a final rulemaking to establish new GHG emissions standards for heavy-duty engines and vehicles. This rule will reduce GHG and other emissions from highway heavy-duty vehicles, the second-largest source of transportation GHG emissions. EPA will ensure additional GHG and air quality benefits by testing vehicles, engines, and fuels to certify that they comply with federal clean air, GHG, and fuel economy standards. In FY 2024, EPA is requesting an additional \$52.5 million and 46.8 FTE for the development of analytical methods, regulations, and analyses to support climate protection by controlling greenhouse gas emissions from light duty, medium-duty, and heavy-duty vehicles. The additional funding also invests in the maintenance, repair and replacement of aging test equipment and infrastructure at the National Vehicle and Fuel Emissions Laboratory.

In FY 2024, EPA will continue to work with other federal agencies to promote more sustainable and resilient communities. This includes identifying and pursuing opportunities to reduce barriers to deploying EV charging infrastructure and working with tribes, states, and communities to ensure equitable distribution and thoughtful community integration of charging infrastructure, including for electric buses and delivery and rideshare vehicles.

In meeting the requirements of Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*² and as part of the Administration's comprehensive approach to tackling the climate crisis, EPA will issue rules to reduce CO₂ and methane from power plants and oil and gas facilities. These rules will be informed by robust engagement with tribes, states, communities, and regulated entities and by any guidance from the judiciary.

Through voluntary partnership programs, EPA will work to incentivize energy efficiency and further decarbonize the transportation, power generation, industrial, and building sectors. Some examples of these programs include ENERGY STAR, Green Power Partnership, Natural Gas STAR, AgSTAR, *GreenChill*, and *SmartWay*. In FY 2024, EPA will continue to implement these climate partnership programs to improve delivery of energy efficiency, clean energy, and heat mitigation solutions to historically underserved and overburdened communities. EPA also will

² Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

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continue domestic programs and international collaboration to reduce exposures to harmful emissions from cookstoves.

EPA will continue to implement the U.S. GHG Reporting Program, which collects and publishes data from more than 8,100 facilities from 41 large industrial source categories in the United States. EPA will improve models of climate change impacts, including how risks and economic impacts can be reduced under mitigation and adaptation scenarios. EPA will also continue to make the Climate Change Indicators website more accessible through enhanced visualization.

In FY 2024, EPA will work to complete the annual Inventory of U.S. Greenhouse Emissions and Sinks,³ and to improve inventory methodologies in areas such as oil and gas, land-use, and waste, consistent with Intergovernmental Panel on Climate Change (IPCC) guidelines. EPA will also meet upcoming Paris reporting requirements and create a new GHG emission calculator, linked to Portfolio Manager, to develop building GHG inventories that fully comply with accounting protocols and local mandates.

Objective 1.2: Accelerate Resilience and Adaptation to Climate Change Impacts – *Deliver targeted assistance to increase the resilience of tribes, states, territories, and communities to the impacts of climate change.*

The FY 2024 Budget includes \$134.9 million and 261.5 FTE for Objective 1.2. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, implement all priority actions in EPA's Climate Adaptation Action Plan and the 20 National Program and Regional Climate Adaptation Implementation Plans to account for the impacts of the changing climate on human health and the environment.⁴
- By September 30, 2026, assist at least 400 federally recognized tribes to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change.
- By September 30, 2026, assist at least 450 states, territories, local governments, and communities, especially communities that are underserved and disproportionately at risk from climate change, to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change.

EPA will take necessary actions to anticipate, prepare for, and adapt to the impacts of climate change to ensure EPA continues to fulfill its mission of protecting human health and the environment even as the climate changes and disruptive impacts increase. It will also support the development of climate adaptation strategies at the local level to advance the climate resilience of tribes, states, territories, local governments, and communities across the Nation. EPA will actively engage organizations representing overburdened and underserved communities that are more vulnerable to climate impacts to ensure the Agency's adaptation plans reflect the principles of environmental justice and equity. EPA's commitments are part of a whole-of-government approach to pursue actions at home and abroad to avoid the most catastrophic impacts of climate change.

³ <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks>.

⁴ These plans are available at: <https://www.epa.gov/climate-adaptation/climate-adaptation-plan>.

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In FY 2024, EPA will continue to modernize its financial assistance programs to encourage climate-resilient investments across the Nation. The Agency will focus on ensuring that the outcomes of its investments are resilient to the impacts of climate change. In addition, EPA will lead by example and prioritize climate resiliency investments across EPA-owned facilities. EPA will conduct climate resiliency assessments at EPA-owned facilities, prioritize investments, and initiate work on priority projects. In FY 2024, EPA will continue to pursue aggressive energy, water, and building infrastructure improvements to advance the Agency's use of carbon pollution-free electricity.

The FY 2024 Budget includes additional \$45.3 million and 26.5 FTE for its work in the Climate Adaptation Program. In FY 2024, EPA will continue to implement its 2021 Climate Adaptation Action Plan as well as the 20 Climate Adaptation Implementation Plans developed by the Program and Regional Offices in FY 2022 and updated in FY 2023. Each Program and Regional Office will implement the priority actions identified in their Implementation Plans to address the five agency-wide priorities from the 2021 EPA Climate Adaptation Action Plan. These strategies are informed by the best available science and deliver co-benefits for mitigation of GHG and other pollution, public health, economic growth and job creation, national security, and environmental justice – all of which will be central to building a more resilient future. These actions will integrate climate adaptation planning into Agency programs, policies, rulemaking processes, enforcement and compliance assurance activities, financial mechanisms, and operations to ensure they are effective even as the climate changes. EPA will leverage the additional resources and FTEs provided in FY 2024 to implement selected additional priority actions identified in program and regional Climate Adaptation Implementation Plans. These additional actions will enhance the adaptive capacity and resilience of states, tribes, territories, local governments, and communities by providing technical assistance through the program and regional offices.

In FY 2024, EPA will provide targeted assistance to tribes and indigenous peoples, states, territories, local governments, communities, and businesses to bolster these groups' climate resilience efforts. The Agency will focus resources on communities with environmental justice concerns to develop new strategies that strengthen adaptive capacity and increase climate resilience across the Nation. The Agency will produce and deliver training, tools, technical assistance, financial incentives, and information the agency's partners indicate they need to adapt and to increase resilience to climate change.

All of the baseline and additional priority actions identified in the 20 Climate Adaptation Implementation Plans support at least one of the three Long Term Performance Goals in Objective 1.2. The priority actions support EPA's efforts to continue to fulfill its mission even as the climate changes and disruptive impacts increase. The additional resources also will be used to advance climate justice through the provision of grants and technical assistance and protect communities that are disproportionately affected by climate change.

Objective 1.3: Advance International and Subnational Climate Efforts – *Collaborate with tribal, state, local, and international partners and provide leadership on the global stage to address climate change.*

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The FY 2024 Budget includes \$95.6 million and 241.2 FTE for Objective 1.3. This objective is directly supported by the following long-term performance goal in the *FY 2022 - 2026 EPA Strategic Plan*.

- By September 30, 2026, implement at least 40 international climate engagements that result in an individual partner commitment or action to reduce greenhouse gas (GHG) emissions, adapt to climate change, or improve resilience in a manner that promotes equity.

Moving forward in addressing the climate crisis calls for international as well as domestic efforts. EPA has an important role in helping countries respond to the climate crisis as well as in reducing domestic climate impacts. Progress will require both significant short-term global reductions in GHG emissions and net-zero global emissions by mid-century alongside increased and equitable adaptation and resiliency to climate change impacts. EPA plays a critical role internationally in providing technical expertise, guidance, and capacity building to help countries set and meet ambitious GHG reductions, improving adaptive capacity, and strengthening climate governance. Specifically, EPA international work will further the environmental governance of priority partner countries so that they can implement and enforce effective climate mitigation activities and incorporate environmental justice climate principles. Without basic governance infrastructure, it is difficult for many countries to make progress on their Nationally Determined Contributions under the Paris Agreement, opening the Agreement to criticism about lack of developing country action on climate. EPA will enhance capacity building governance programs for priority countries with increasing GHG footprints and increase their capacity to implement partnerships as well as legislative, regulatory, and legal enforcement. These programs will also work to improve adaptive capacity and mitigation strategies of pollution burdened, vulnerable and indigenous communities.

These efforts support Executive Order (EO) 14008: *Tackling the Climate Crisis at Home and Abroad*,⁵ which directs federal agencies to develop plans for integrating climate considerations into their international work, as appropriate and consistent with applicable law. Objective 1.3 fulfills EO 14008 by dedicating EPA expertise to help countries build capacity so they can set and meet ambitious GHG reduction commitments under the Paris Agreement, while also building resilience to current and future climate impacts. EPA's long-term aim is to implement at least 40 international climate engagements by 2026 that result in an individual partner commitment or action to reduce GHG emissions, adapt to climate change, or improve resilience in a manner that promotes equity.

As of January 2023, EPA had implemented 11 international climate engagements resulting in individual partner commitments or actions as outlined in the long-term performance goal stated above. In FY 2024 with additional resources, in anticipation of the G7 Summit in Italy, EPA would collaborate with other Federal agencies to design and implement projects for the Partnership for Global Infrastructure and Investment (PGII) that conform to the values and climate policy objectives of EO 14008. PGII was announced at the 2022 G7 Summit in Germany for the purpose of mobilizing public and private investment in low-and-middle-income countries for decarbonizing infrastructure and to support the Just Energy Transition Partnerships with individual

⁵ Executive Order 14008: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

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countries for the early decommissioning of coal-fired power plants and to attract private capital

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Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Achieve tangible progress for historically overburdened and underserved communities and ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in developing and implementing environmental laws, regulations, and policies.

Introduction

EPA will center its mission on the integration of environmental justice (EJ), equity, and civil rights across the Nation's environmental protection enterprise. We will focus on all American communities, those within the contiguous and non-contiguous states and all other territories and protectorates of the United States. By doing so, EPA will advance the promise of clean air, clean water, and safe land to communities across the country that have not fully benefitted from the Nation's decades of progress. Centering its work on justice is especially important in an era when EPA must simultaneously break the cycle of historic environmental injustices while maximizing protection for these same communities that are too often hit worst and first from the impacts of a changing climate. In the *FY 2022 – 2026 EPA Strategic Plan*, EPA added "justice and equity" to the Agency's fundamental principles,⁶ as originally articulated by Administrator William Ruckelshaus.

EPA's goal is to achieve measurable environmental, public health, and quality of life improvements in the most overburdened, vulnerable, and underserved communities. Achieving this goal will require significant transformation and mindfulness in how EPA understands and conducts its work, including how EPA prioritizes program resources, stewards its relationships with regulatory partners and recipients of EPA funds, implements statutory authorities, and engages the communities most affected by environmental and public health threats, especially as the climate changes. Critical to achieving this goal is for EPA to proactively engage with tribes, states, and local governments to discuss and address disproportionate impacts through their implementation of EPA authorities and engage in meaningful joint planning with communities to advance community visions and priorities.

The vigorous enforcement of civil rights laws is also key to addressing systemic barriers and ensuring recipients of EPA funding make more responsible and equitable siting and permitting decisions. EPA's work on environmental justice and civil rights enforcement will be a success if it leads to reductions in longstanding racial and ethnic disparities such as in levels of air pollutants and exposure to toxins; access to clean and reliable water infrastructure, free of lead and other toxins; and management of solid waste.

EPA will work to increase its capacity to tackle environmental justice and civil rights issues and embed consideration of these issues in its programs, policies, and processes, all with the goal of improving outcomes in environmental and health conditions for communities with environmental justice concerns. The FY 2024 Budget includes \$758.4 million and 1,181 FTE to advance *Goal 2, Take Decisive Action to Advance Environmental Justice and Civil Rights*.

⁶ Follow the science, follow the law, and be transparent, and the additional fourth principle: advance justice and equity.

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Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels – Empower and build capacity of underserved and overburdened communities to protect human health and the environment.

The FY 2024 Budget includes \$204.5 million and 357.6 FTE for Objective 2.1. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 Strategic Plan*:

- By September 30, 2026, all EPA programs that seek feedback and comment from the public will provide capacity-building resources to communities with environmental justice concerns to support their ability to meaningfully engage and provide useful feedback to those programs.⁷
- By September 30, 2026, include commitments to address disproportionate impacts in all written agreements between EPA and tribes and states (e.g., grant work plans) implementing delegated authorities.⁸
- By September 30, 2026, EPA programs with direct implementation authority will take at least 100 significant actions that will result in measurable improvements in Indian country.
- By September 30, 2026, all state recipients of EPA financial assistance will have foundational civil rights programs in place.⁹
- By September 30, 2026, increase by 40% the number of Office of Research and Development (ORD) activities related to environmental justice that involve or are applicable to tribes, states, territories, local governments, and communities.¹⁰

EPA has the responsibility to make transformative progress on environmental justice and civil rights at the tribal, state, and local levels through a whole-of-government approach that involves communities as authentic partners. In FY 2024, EPA will continue support for community-led action at new levels by providing unprecedented investments and benefits directly to communities with environmental justice concerns as well as by integrating equity throughout all Agency support programs. EPA will ensure that all relevant programs are actively supporting community efforts to engage and influence program implementation and maximize the benefits from the investment of resources to achieve meaningful change on the ground for the most impacted communities. Supporting communities as they adapt to and recover from climate change is also part of this commitment.

Critical to EPA's success in advancing equity and justice is the responsibility to financially support the efforts of community members and organizations that provide EPA with opportunities to learn from and engage with their communities. To meet this responsibility, EPA commits to establishing the necessary policy and procurement mechanisms so that EPA is able to financially support organizations and individuals who provide EPA with community engagement, input, educational

⁷ First year activities of this LTPG will focus on definition and scope of program participation and what qualifies as capacity-building resources.

⁸ First year activities of this LTPG will focus on definition and scope of written agreements and what qualifies as addressing disproportionate impacts.

⁹ For reference only, and as an example from a smaller subset of state recipients - EPA's proactive initiative involving foundational civil rights programs of state agencies in Regions 1, 5, and 7, which consisted of 14 state agencies, the baseline from the proactive initiative in FY 2020 was 6.5%.

¹⁰ Baseline to be developed in FY 2022.

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opportunities, and other forms of community expertise. In addition, the Agency will take concrete action to include the voices, experiences, and passions of the full diversity of the Nation in our workforce, such as reaching out and bringing in diverse students on paid internships, fellowships, and clerkships.

In FY 2024, EPA will continue to work proactively to integrate environmental justice and civil rights into policies and activities as a fundamental element of the Agency's relationships with federal, state, and local partners to jointly achieve beneficial changes on the ground for communities. EPA will invest in oversight, guidance, and assistance for states and local governments to embed environmental justice into their programs and enhance civil rights enforcement.

With the public engagement, partnerships, and environmental education investment of \$24 million and 24 FTE, EPA will establish and implement programs to improve its engagement, partnership, and environmental education initiatives at the regional levels and across EPA, including increased engagement with communities and Agency stakeholders and Justice40, an initiative identified in Executive Order (EO) 14008, *Tackling the Climate Crisis at Home and Abroad*.¹¹ The additional FTE and funding will support the Administrator on public engagement travel and his Journey to Justice tours across the country to hear the environmental concerns of local communities. These resources also will allow EPA to better coordinate and communicate around Justice40; Historically Black Colleges and Universities and Minority Serving Institutions engagements; expansion of public and private partnerships to reach out to a broader group of people; creation of a Youth Engagement Council for environmental learning; and strengthened environmental education work on the local level.

Equity principles and equal protection require that implementation of federal environmental law protections be as robust inside Indian country as EPA requires these protections to be outside of Indian country. EPA directly implements the majority of federal environmental programs in Indian country where EPA seeks to apply key environmental justice principles, such as equity, meaningful involvement, and fair treatment. In FY 2024, EPA will continue to ensure that direct implementation activities are fully protective of communities and will advance environmental justice for federally recognized tribes in keeping with the federal trust responsibility. With the tribal strategic investment of \$34.7 million and 166.9 FTE, an increase of \$20 million and 88.3 FTE above the FY 2023 enacted, EPA will strengthen efforts to improve public health by reducing disparities in compliance rates between Indian country and the national average through greater agency support and leadership to EPA programs and regions for planning and measuring EPA direct implementation actions in Indian country. In addition, EPA will implement the revised EPA Tribal Consultation Policy and Implementation Guidance to improve consultation practices in conformance with the Executive Order on Tribal Consultation and train EPA staff.

EPA will continue in FY 2024 its longstanding commitment to assist tribes in building the capacity to receive delegated programs. In those instances when tribal governments are authorized to implement federal programs, EPA supports tribal governments' inclusion of environmental justice

¹¹ Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), found at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

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principles into their programs, community engagement, and decision-making processes, and is committed to ensuring flexibilities in Indian General Assistance Program (GAP) funding for tribal environmental program implementation. Integration of environmental justice principles into all EPA activities with tribal governments and in Indian Country is designed to be flexible enough to accommodate EPA tribal program activities and goals, while meeting EPA environmental justice goals.

Objective 2.2: Embed Environmental Justice and Civil Rights in EPA Programs, Policies, and Activities – *Integrate environmental justice and civil rights in all the Agency’s work to maximize benefits and minimize impacts to underserved and overburdened communities.*

The FY 2024 Budget includes \$476.8 million and 575.1 FTE for Objective 2.2. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 Strategic Plan*:

- By September 30, 2026, reduce disparities in environmental and public health conditions represented by the indicators identified through the FY 2022-2023 Agency Priority Goal.¹²
- By September 30, 2026, 80% of significant EPA actions with environmental justice implications will clearly demonstrate how the action is responsive to environmental justice concerns and reduces or otherwise addresses disproportionate impacts.¹³
- By September 30, 2026, all EPA programs that work in and with communities will do so in ways that are community-driven, coordinated and collaborative, support equitable and resilient community development, and provide for meaningful involvement and fair treatment of communities with environmental justice concerns.¹⁴
- By September 30, 2026, all EPA programs and regions will identify and implement areas and opportunities to integrate environmental justice considerations and achieve civil rights compliance in their planning, guidance, policy directives, monitoring, and review activities.
- By September 30, 2026, all EPA programs and regions will implement program and region-specific language assistance plans.
- By September 30, 2026, all EPA programs and regions will implement program and region-specific disability access plans.

Meeting these commitments to achieving change on the ground and accountability for such change will be the ultimate measure of the Agency’s success at advancing environmental justice, civil rights, and equity, including the implementation of EO 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, EO 14008, *Tackling the Climate Crisis at Home and Abroad*, and EO 14091, *Further Advancing Racial Equity and Support*

¹² EPA will monitor progress through a holistic system that tracks the actions and responsibilities individual national programs have identified to support reducing disparities through the implementation of their statutory authorities, coordinated efforts of regulatory partners, support for community action, and other key actions.

¹³ First year activities of this LTPG will focus on definition and scope of significant EPA action and what qualifies as environmental justice implications, responsiveness to community concerns, and addressing disproportionate impacts.

¹⁴ First year activities of this LTPG will focus on definition and scope of program participation and what qualifies as adoption of the community-driven approach.

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for Underserved Communities Through the Federal Government.¹⁵ These efforts include incorporating feedback from communities with environmental justice concerns while analyzing and addressing disproportionate impacts. The laws that Congress passed to guide EPA's work are meant to apply to all Americans. EPA must not only better support community efforts to engage with the Agency but also advance the Agency's ability to engage in community-driven work through the regions and across all programs. EPA must implement the Civil Rights Act as equally as environmental statutes.

The majority of the resources allocated for Objective 2.2 is devoted to the Environmental Justice program with more than \$370 million and 264.6 FTE requested in FY 2024. This includes an important new investment of \$71.2 million and 50 FTE to build out a cadre of staff to serve as EJ Community Navigators, primarily through regional offices, to provide a more robust and broad coverage of relationship building, awareness, and support directly from EPA to community leaders and their local on-the-ground partners such as local governments, tribes, and academic institutions. The EJ Community Navigators will be dedicated to developing and stewarding EPA's relationships with these partners to ensure: awareness by other EPA programs of the needs of these communities thus facilitating holistic responsiveness by the agency in deploying our programs, resources, and staff; deploying EJ resources directly to these communities in a timely manner and in ways that meet the needs of the communities; a much stronger ability to proactively connect other forms of federal involvement and assistance from other agencies to leverage the multiple resource streams needed to make meaningful progress on the complex and multifaceted challenges faced by communities with EJ concerns.

In FY 2024, EPA will set ambitious goals of achieving meaningful change on the ground for communities with environmental justice concerns; identify data gaps; build tracking systems; and put in place any needed policy, guidance, or regulatory changes to achieve the goals. EPA also will ensure that Agency plans include responsibility and measurable accountability for advancing environmental justice, including the annual performance plans of key political, senior executive, and general schedule staff. EPA will develop and commit to at least 10 measures of progress towards achieving meaningful outcomes on the ground through the identification of indicators of disparities with the goal of informing EPA policy and tracking reductions over time.

In FY 2024, EPA will establish policies to ensure that actions with major significance for environmental justice and civil rights are responsive to the needs of communities, consider the results of environmental justice analyses, and reflect recommendations from the National Environmental Justice Advisory Council. EPA also will continue to ensure that all EPA programs develop guidance on the use of environmental justice tools such as EJScreen and the Climate and Economic Justice Screening Tool¹⁶ to support screening and analysis of program outcomes.

In FY 2024, EPA will continue to leverage and coordinate its investments in communities and collaborate with partners and other external stakeholders to advance comprehensive and strategic

¹⁵ Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 20, 2021), found at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>. Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), found at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

¹⁶ For more information, please visit, <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

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community-driven approaches. EPA will increase the number of programs that have fully integrated the key principles of community work into their program implementation and will continue to build on the number of collaborative partnerships centered on community priorities primarily through an update and relaunch of EPA's comprehensive public involvement policy. This effort will reestablish a consistent foundation defined by the updated policy to ensure that all EPA program implementation efforts, with a particular focus on program deployment and policy development, will be rooted in a comprehensive approach to meaningfully engaging impacted communities.

EPA will continue to communicate requirements and expectations related to environmental justice and civil rights to its employees through education, training, outreach, and technical assistance. In particular, EPA will improve employees' awareness and understanding of civil rights enforcement and strengthen intra-agency collaboration to identify whether recipient programs and activities are abiding by civil rights laws or engaging in prohibited discrimination.

Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns – *Strengthen enforcement of and compliance with civil rights laws to address the legacy of pollution in overburdened communities.*

The FY 2024 Budget includes \$77.1 million and 248.3 FTE for Objective 2.3. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 Strategic Plan*:

- By September 30, 2026, initiate 45 proactive post-award civil rights compliance reviews to address discrimination issues in environmentally overburdened and underserved communities.
- By September 30, 2026, complete 305 audits to ensure EPA financial assistance recipients are complying with nondiscrimination program procedural requirements.
- By September 30, 2026, complete 84 information sharing sessions and outreach and technical assistance events with overburdened and underserved communities and environmental justice advocacy groups on civil rights and environmental justice issues.

To address the legacy of pollution in overburdened communities that results from discriminatory actions, whether direct or indirect, intentional or unintentional, EPA must use the full extent of its authority and resources to enforce federal civil rights laws. EPA is required to enforce federal civil rights laws that prohibit discrimination on the basis of race, color, national origin (including limited English proficiency), disability, gender, and age, in programs or activities that receive Agency financial assistance. To ensure EPA's financial assistance is not being used in a manner that discriminates and subjects already overburdened communities to further harm, EPA must support and promote a robust and mature external civil rights compliance program for execution of EPA responsibilities and to provide a strong partner to its environmental justice program.

EPA is committed to enforcing compliance with federal civil rights laws to address historical and systemic barriers that contribute to the environmental injustice, overburdening, and vulnerability of communities. In FY 2024, EPA proposes to invest \$31.5 million and 143.6 FTE, an increase of \$18.6 million and 77.2 FTE above the FY 2023 enacted level, in the external civil rights program

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to continue to build capacity to improve oversight and enforcement of civil rights compliance and prioritize and advance EJ concerns. The additional FTE will support activities including investigations into claims of discrimination in communities and pre-award and post-award compliance activities. It is critical that, in addition to increasing the FTE for the external civil rights work done in headquarters, there be a significant increase in FTE for the regional offices specifically targeted to external civil rights work. The regional offices provide critical support to external civil rights investigations and resolutions.

In FY 2024, EPA will take actions that will address permitting decisions found to be discriminatory by EPA financial assistance recipients. Through investigations and informal resolution agreements, EPA will address discriminatory disparities in exposure to pollutants and toxins in order to advance access to clean air, water and land and health protection. EPA will increase the number of affirmative compliance reviews targeting discrimination in critical environmental health and quality of life impacts in overburdened communities. The Agency will issue important policy guidance to clarify recipients' civil rights obligations and improve compliance through technical assistance deliveries. Further, EPA will increase the timeliness and effectiveness of complaint investigations and resolutions. In FY 2024, EPA will increase the number of meaningful engagements with overburdened communities and environmental justice groups on civil rights and environmental justice issues.

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Goal 3: Enforce Environmental Laws and Ensure Compliance

Improve Compliance with the Nation's environmental laws and hold violators accountable.

Introduction

A robust compliance monitoring and enforcement program is necessary to ensure communities receive the environmental and human health benefits intended by environmental statutes and EPA's regulations. EPA regulates more than 1.2 million facilities subject to a variety of environmental statutes that protect human health and the environment. Likewise, EPA regulates a wide range of products, from automobiles to pesticides. In FY 2024, EPA will continue to work cooperatively with tribes, states, territories, and other federal agencies to improve compliance with environmental laws and statutes. EPA will continue to collaborate with tribes in Indian country, by both directly implementing compliance monitoring and enforcement programs and supporting and overseeing tribal implementation of approved programs. In FY 2024, EPA will provide \$757.1 million and 3,353.6 FTE to strengthen compliance with the Nation's environmental laws and hold violators accountable under *Goal 3: Enforce Environmental Laws and Ensure Compliance*.

In FY 2024, EPA will collaborate with tribes, states, territories, and other federal agencies to focus federal enforcement resources on the most serious environmental problems where noncompliance with environmental statutes and regulations is a significant contributing factor and where federal enforcement can have a significant impact on the Nation's air, water, and land. The Agency will continue to identify a small number of key areas, called National Enforcement and Compliance Initiatives, where EPA focuses attention on the most significant, widespread environmental problems.

In FY 2024, the Agency is requesting an increase of \$22.6 million and 38.4 FTE above the FY 2023 enacted to continue rebuilding the inspector cadre, which is EPA's highest enforcement priority. A robust inspection program, including compliance and enforcement actions, is essential to advancing the promise of clean air, land, and water to the many communities across the country that have not received the full benefits from the Nation's decades of progress. Dedicated staff that can identify public health concerns and environmental regulatory violations are critical to protect communities that are underserved or disproportionately harmed by pollution. EPA's inspection programs have faced substantial resource challenges for over a decade, leading to a loss of Agency expertise and a decline in the numbers of inspections. To meet EPA's environmental justice goals and its mission to protect human health and the environment, EPA must rebuild and strengthen its inspection program by hiring and training new and existing inspectors, including in-person basic inspector trainings and travel funding for the trainings for the following programs: Clean Air Act; Safe Drinking Water Act; Clean Water Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, & Rodenticide Act; and Toxic Substances Control Act. Additionally, funding is needed to purchase health and safety equipment and inspection monitoring equipment. Travel funding for inspections also is essential to get inspectors into the field.

In addition, EPA will focus on vulnerable communities and those facing substantial burdens from environmental noncompliance. In these areas, EPA will increase inspections, prioritize enforcement cases, identify remedies with tangible benefits for harmed communities, and increase engagement with communities about enforcement cases. In FY 2024, EPA also will target

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compliance monitoring in overburdened and underserved communities with environmental justice concerns. EPA will continue to initiate enforcement actions to protect against children's health hazards in areas such as exposure to lead paint, the presence of lead and other contaminants in drinking water, and particulate air emissions with the potential to aggravate asthma.

The Agency will address climate change by directing resources to ensure effective enforcement responses for those sources with noncompliant emissions of greenhouse gases (GHGs), develop remedies that are consistent with GHG mitigation and climate resilience goals, and pursue violators of the Renewable Fuel Standard. In addition, EPA requests an additional \$12.1million and 26.8 FTE above the FY 2023 enacted to enforce against the illegal importation, distribution, and use within the United States of hydrofluorocarbons (HFCs), which are chemicals with potent global warming potential, under the American Innovation and Manufacturing (AIM) Act.¹⁷

In FY 2024, an increase of \$5.6 million and 6.5 FTE will support efforts to investigate and identify releases of per- and polyfluoroalkyl substances (PFAS) to the air, land, and water by actively investigating under RCRA, TSCA, CWA, SDWA, and CAA at the yet-unknown number of processing facilities, waste disposal facilities, and federal facilities where PFAS are suspected of contaminating various environmental media. PFAS released into the environment may present an urgent public health and environmental threat. EPA will continue to investigate releases, address imminent and substantial endangerment situations, and prevent exposure to PFAS, under multiple environmental statutes. OECA has been stretching its base Superfund (SF) & EPM resources to (1) issue corporate-wide information requests and analyze responses, (2) create site profiles and information databases on specific facilities, (3) obtain site-specific data, and (4) use administrative and judicial authorities to require sampling and other response actions.

EPA will continue implementing the Foundations for Evidence-Based Policymaking Act,¹⁸ coordinated by EPA's Evidence Act officials. The Agency will expand its evidence-based compliance program through projects developed under OECA's compliance learning agenda, which systematically identifies the most important evidence the Agency needs to gather and generate to advance its compliance goals, and ensure the Agency uses high quality data and other information to inform policy and decision making.

Objective 3.1: Hold Environmental Violators and Responsible Parties Accountable – Use vigorous and targeted civil and criminal enforcement to ensure accountability for violations and to clean up contamination.

The FY 2024 Budget includes \$438.6 million and 2,444.1 FTE for Objective 3.1. This objective is directly supported by the following long-term performance goal in the *FY 2022 – 2026 Strategic Plan*:

- By September 30, 2026, reduce to not more than 93 the number of open civil judicial cases more than 2.5 years old without a complaint filed.¹⁹

¹⁷ For more information on the AIM Act, please visit: <https://www.epa.gov/climate-hfcs-reduction/aim-act>.

¹⁸ Full-text of the Foundations for Evidence-Based Policymaking Act of 2018 may be found at: <https://www.congress.gov/bill/115th-congress/house-bill/4174/text>.

¹⁹ For comparison, there were 129 cases more than 2.5 years old without a complaint filed as of June 30, 2018. The number of cases fluctuates and is therefore difficult to predict how many cases will "age in" in a given year. EPA reduces the number of

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Enforcement is essential to ensuring that everyone is protected by the Nation's environmental laws and regulations. EPA strives to not only return violators to compliance but also obtain timely relief needed to address the underlying causes of the violations, to prevent reoccurrence, and, in appropriate cases, mitigate the harm to the communities impacted by noncompliance. EPA uses administrative enforcement and Alternative Dispute Resolution (ADR), where appropriate, in the environmental enforcement context and plans to deploy ADR to new Superfund and External Civil Rights projects. In FY 2024, EPA will invest an additional \$1.3 million and 4.1 FTE for a total of \$3.1 million and 10.0 FTE to the ADR Program to promote equity by including underserved communities in negotiations.

Civil Enforcement

The overall goal of EPA's Civil Enforcement Program is to maximize compliance with the Nation's environmental laws and regulations to protect human health and the environment. In FY 2024, EPA requests \$245.9 million and 1,041.7 FTE, an increase of \$36.7 million and 43.6 FTE above the FY 2023 enacted, to support civil enforcement efforts. EPA will encourage regulated entities to correct violations rapidly, ensure that violators do not realize an economic benefit from noncompliance, pursue enforcement to deter future violations, and continue to strengthen environmental partnerships with tribes, states, and other federal agencies. The additional resources will enhance EPA's ability to incorporate environmental justice and climate change considerations into all phases of case development. To protect public health and ensure that private, public, and federal facilities are held to the same standard, EPA will rebuild and train headquarters and regional inspectors to inspect more facilities in the large public, private, and federal facility universe. In addition, EPA will continue to improve its sampling capability to identify regulatory violations. These resources are needed recognizing the complexity of many facilities and the inspections needed to identify the range of potential contamination. EPA will pursue enforcement actions at public, private, and federal facilities where significant violations are discovered to protect the health of surrounding communities. Lastly, EPA will provide technical and scientific support to tribes, states, and territories with authorized programs.

In FY 2024, EPA is requesting an additional \$3.4 million and 7.0 FTE to enforce the Coal Combustion Residuals (CCR) rule. The CCR Program ensures that coal ash disposal units (landfills and surface impoundments) do not present dangerous structural stability issues (such as those that led to the catastrophic 2008 Kingston, Tennessee coal ash disaster) that could put surrounding communities in harm's way. These resources will augment the work the Agency has already started, i.e., analyzing groundwater monitoring data and the corrective action and closure efforts of facilities to determine whether facilities are complying with the regulatory requirements and adequately addressing coal ash disposal risks.

EPA has been working to improve the processes associated with enforcement actions to move more quickly in protecting the environment. To reduce the time that a facility is in violation of an environmental standard, EPA has a FY 2026 long-term performance goal (LPTG) to reduce to no more than 93 the number of open civil judicial cases more than 2.5 years old without a complaint

older cases using a number of different tools. For example, sometimes the United States government needs to file a complaint in order to make progress in resolving a case; other times, it needs to drop a claim or shift its injunctive relief or penalty demand because of litigation risk.

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filed. In FY 2022, EPA reduced that number to 65, surpassing the FY 2026 LPTG. EPA will continue to build upon this success to further improve upon our accomplishments in FY 2024 and beyond.

Criminal Enforcement

EPA's Criminal Enforcement Program enforces the Nation's environmental laws through targeted investigation of criminal conduct committed by individual and corporate defendants who threaten public health and the environment. EPA's Criminal Enforcement Program plays a critical role across the country supporting tribes, states, and territories that may have limited capacity to investigate and prosecute environmental crimes. In FY 2024, the Agency requests \$75.1 million and 296 FTE, an increase of \$4.4 million and 26.7 FTE above the FY 2023 enacted, to support the Criminal Enforcement Program by targeting investigations on the most egregious environmental cases.

Superfund Enforcement

In FY 2024, the Superfund Enforcement program will transition from using annual appropriations to funding activities and staff through Superfund tax receipts. Resources are expected to be at an equivalent level. The Program will continue to facilitate prompt site cleanup. EPA uses an "enforcement first" approach before turning to taxpayer dollars to fund cleanups, by maximizing Potentially Responsible Party (PRP) involvement at Superfund sites. The Superfund Enforcement Program works to ensure that viable and liable PRPs pay to clean up sites and seeks to recover costs if EPA expends Superfund dollars to clean up sites. These enforcement efforts allow the Trust Fund to be used at those sites that have no funding source other than government resources and have no other means of cleanup. Thus, Superfund enforcement efforts ensure that Superfund sites are cleaned up in a timely manner in addition to getting more sites cleaned up than would be possible using only government funds. With the availability of Superfund tax receipts in FY 2024, EPA plans to use these resources to support traditional Superfund Enforcement efforts and to place greater emphasis towards implementing Agency initiatives like Environmental Justice, PFAS, and Lead. In addition, EPA will ensure we provide DOJ essential funding to support Agency efforts, complete negotiations quicker, provide additional training, and provide greater regional support towards PRP searches and other counseling work.

Objective 3.2: Detect Violations and Promote Compliance – *Ensure high levels of compliance with federal environmental laws and regulations through effective compliance tools – including inspections, other monitoring activities, and technical assistance supported by evidence and advanced technologies.*

The FY 2024 Budget includes \$318.5 million and 909.5 FTE for Objective 3.2. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 Strategic Plan*:

- By September 30, 2026, send 75% of EPA inspection reports to facilities within 70 days of inspection.²⁰

²⁰ For comparison, 46% of inspection reports were sent within 70 days of inspection at the end of FY 2018.

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- By September 30, 2026, conduct 55% of annual EPA inspections at facilities that affect communities with potential environmental justice concerns.²¹

Compliance Monitoring

Effectively focusing compliance monitoring, including inspections in overburdened and underserved communities with environmental justice concerns, plays a critical role in achieving the goals EPA has set forth for protecting human health and the environment. Achieving high rates of compliance with environmental laws and regulations requires the use of a wide range of compliance tools, including compliance monitoring. Through its ongoing process of selecting National Enforcement and Compliance Initiatives in collaboration with tribes, states, and territories, EPA will focus its work on critical areas of noncompliance. In FY 2024, EPA will advance its efforts to address climate change mitigation and adaptation issues through directing of inspections, compliance monitoring, and technical assistance to sources with the most potential for noncompliant emissions of greenhouse gases.

EPA will continue to emphasize the importance of providing facilities with a completed inspection report in a timely manner notifying the facility of any potential compliance issues. In FY 2024, EPA is requesting a total of \$3.3 million and 3.0 FTE to expand software solutions for field inspectors to improve the effectiveness and efficiency of compliance inspections conducted by EPA and authorized states. Smart Tools software allows EPA to use its compliance monitoring resources more efficiently and to make inspection reports more available to regulated entities and to the public in affected communities.

In FY 2024, EPA is requesting a total of \$3.1 million and 1.0 FTE to support the Agency's Compliance Advisor Program (previously called Circuit Riders Program), which reduces noncompliance at small public water systems (PWSs) and small wastewater treatment facilities (WWTFs) by providing hands-on technical assistance. To date, Compliance Advisors have provided support to approximately 199 small PWSs and 63 WWTFs in under-resourced communities nationwide. Hundreds more small systems and facilities across the Nation need technical support to help them achieve and stay in compliance and provide clean and safe water to the communities they serve.

In FY 2024, EPA will continue its implementation of the Evidence Act by continuing its work on the "Drinking Water Systems Out of Compliance" learning priority area of EPA's Learning Agenda. EPA also will expand its ongoing work with tribes, states, and academic experts to develop and implement OECA's compliance learning agenda: prioritizing the most pressing programmatic questions; conducting evidence-based studies to address these questions; and identifying effective and innovative approaches for improving compliance.

In FY 2024, EPA will continue the data system modernization effort to better support tribes, states, local governments, federal partners, and the public's need for information with modernized technology and it will implement EPA's enterprise-wide Digital Strategy with shared IT services. For example, EPA is requesting an increase of \$22.9 million and 5.0 FTE to modernize the Agency's enforcement and compliance assurance data systems. These resources will complement those provided to EPA under the Inflation Reduction Act that are targeted for improving

²¹ The baseline for this measure is 27% based on average of FY 2017 - FY 2019.

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enforcement technology, inspection software, and other related purposes. Modernization will facilitate EPA's efforts to better target noncompliance that impacts overburdened and vulnerable communities and will increase the availability of information about environmental conditions in those communities and elsewhere.

Through the State Review Framework, EPA periodically reviews authorized state compliance monitoring and enforcement programs for Clean Air Act (CAA) Stationary Sources, Resource Conservation and Recovery Act (RCRA) Hazardous Waste facilities, and the Clean Water Act National Pollutant Discharge Elimination System (NPDES) dischargers. This review is conducted using criteria agreed upon by states to evaluate performance against national compliance monitoring or enforcement program standards. When states do not achieve standards, the Agency works with them to make progress. However, EPA may take a lead implementation role when authorized states have a documented history of failure to make progress toward meeting national standards. In total, EPA provides \$165.3 million and 520.4 FTE to detect violations and promote compliance with environmental laws, an increase of \$50.9 million and 41.5 FTE above the FY 2023 enacted budget.

Categorical Grants: Pesticides Enforcement

In FY 2024, EPA is requesting a total of \$25.6 million funding cooperative agreements to support state and tribal compliance and enforcement activities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The resources will be used to rebuild programmatic capabilities between EPA and partner agencies; provide vital training programs to EPA, state, territory, and tribal partners; and help address environmental justice concerns in overburdened and vulnerable communities.

Categorical Grants: Toxic Substances Compliance

In FY 2024, EPA is requesting a total of \$6.9 million to continue focusing on compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances such as asbestos, lead-based paint, and polychlorinated biphenyls (PCBs), and to encourage states to establish their own compliance and enforcement programs for lead-based paint and asbestos.

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Goal 4: Ensure Clean and Healthy Air for All Communities

Protect human health and the environment from the harmful effects of air pollution.

Introduction

All people regardless of race, color, national origin, or income deserve to breathe clean air outside and indoors, and it is especially important to protect the health of vulnerable and sensitive populations including children and persons adversely affected by persistent poverty or inequality. Numerous scientific studies have linked air pollution and specific pollutants to a variety of health problems and environmental impacts. Long-term exposure to elevated levels of certain air pollutants is associated with increased risk of cancer, premature mortality, and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems. Levels of harmful air pollutants have continued to decline even as the economy has grown significantly over the long term. Between 1970 and 2021, the combined emissions of six key pollutants dropped by 78 percent, while the U.S. economy remained strong – growing 292 percent over the same period.²² Yet poor air quality still affects millions of people across the country, affecting near- and long-term health and quality of life. EPA will continue to build on its historic progress and work to assure clean air for all Americans, with a particular focus on those in underserved and overburdened communities.

In FY 2024, EPA will work to ensure clean and healthy air for all communities by reducing emissions of ozone-forming pollutants, particulate matter, and air toxics. In the FY 2024 Budget, EPA is requesting an investment of \$132.5 million and 33 FTE to modernize the Nation's air quality and radiation monitors and to make their supporting information systems more reliable and resilient in emergencies, such as wildfires and radiation events, and better able to produce near real-time data to assess and communicate exposure risks to vulnerable populations. EPA also will work to address high-risk indoor air quality pollutants in homes, schools, and workplaces. The Agency will rely on proven approaches including innovative market-based techniques, public and private-sector partnerships, community-based approaches, regulatory and technical assistance programs that promote environmental stewardship, public education, and programs that encourage adoption of cost-effective technologies and practices. Understanding that many sources of air pollutants also are sources of greenhouse gases (GHG), the Agency will look to control strategies that can reduce both air pollution and mitigate the impacts of climate change. In the FY 2024 Budget, \$1.402 billion and 2,207.0 FTE are allocated to Goal 4 to advance EPA efforts in protecting human health and the environment from the harmful effects of air pollution.

Objective 4.1: Improve Air Quality and Reduce Localized Pollution and Health Impacts –

Reduce air pollution on local, regional, and national scales to achieve healthy air quality for people and the environment.

The FY 2024 Budget includes \$1.242 billion and 1,833.2 FTE for Objective 4.1. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, reduce ozone season emissions of nitrogen oxides (NO_x) from electric power generation sources by 21% from the 2019 baseline of 390,354 tons.

²² For additional information, please visit: <https://gispub.epa.gov/air/trendsreport/2022/>

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- By September 30, 2026, improve measured air quality in counties not meeting the current National Ambient Air Quality Standards (NAAQS) from the 2016 baseline by 10%.
- By September 30, 2026, strive to ensure all people with low socio-economic status (SES) live in areas where the air quality meets the current fine particle pollution (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).
- By September 30, 2026, ensure U.S. consumption of hydrochlorofluorocarbons (HCFCs) is less than 76.2 tons per year of ozone depletion potential.²³

In FY 2024, EPA will work collaboratively with tribal and state air agencies to maintain and improve the Nation's air quality. EPA will focus particularly on advancing environmental justice by engaging with local communities that have been historically underserved on key activities including technical assistance, regulation development, and financial assistance. In FY 2024, \$366.7 million and 1079.7 FTE are allocated to the Federal Support for Air Quality Management Program to implement climate and clean air regulations and programs, which is an increase of \$207.6 million and 200.4 FTE above the FY 2023 enacted. This includes resources for activities such as supporting the NAAQS review and implementation work, taking timely action on State Implementation Plans (SIPs) to reduce the SIP backlog, and environmental justice activities. This also includes additional resources for modernizing the Nation's ambient air monitoring network and for supporting community-scale monitoring.

Taking into account the most current research findings on health effects and changing conditions from a warming climate, EPA will continue to review the NAAQS and make revisions, as appropriate. Specifically, the President directed EPA to review the 2020 Particulate Matter (PM) NAAQS and the 2020 Ozone NAAQS.²⁴ EPA will work to improve air quality in areas not in attainment with the NAAQS, including assisting tribes and states in developing Clean Air Act-compliant SIPs. EPA will continue reviewing regional haze SIPs, working closely with states to improve visibility in the country's national parks and wilderness areas.

EPA will reduce air pollution by focusing on the transportation sector's largest contributors to criteria pollutant and GHG emissions: light-duty vehicles (LDVs) and heavy-duty vehicles (HDVs). EPA will continue to work to ensure that Clean Air Act requirements are met for new transportation projects with heavy-duty diesel traffic, such that they do not worsen air quality near communities with environmental justice concerns. The Agency will collaborate with a broad range of stakeholders to develop targeted, sector-based, and place-based strategies for diesel fleets, including school buses, ports, and other goods movement facilities.

In FY 2024, EPA will continue to operate nationwide and multi-state programs, such as the Acid Rain Program (ARP) and the Cross-State Air Pollution Rules (CSAPR), that address major global, national, and regional air pollutants from the power sector and other large stationary sources. EPA also will work on several regulatory actions related to criteria air pollutants, air toxics, and GHG pollution from power plants. EPA has made significant progress in reducing emissions from power plants through the ARP and CSAPR. Together, as of 2021, the Programs delivered a 94% reduction

²³ The U.S. HCFC consumption baseline is 15,240 ODP-weighted metric tons effective as of January 1, 1996.

²⁴ Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

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of sulfur dioxide and a 85% reduction in nitrogen oxide emissions from 1990 levels. For FY 2021, there has been 100% compliance for power plants in the ARP and CSARP allowance trading programs.²⁵

As part of a forward-looking air toxics strategy, EPA will address regulatory and emerging issues and improve access to air toxics data. The Agency will continue implementing an approach that develops and shares air toxics data faster and more regularly to the public, allowing for increased transparency and the ability to see trends and risks over time. By 2024, EPA will continue reporting the most current air toxics data each year in the annual Air Trends Report and an online interactive tool, instead of the previous three to four-year cycle for reporting air toxics data, and providing that data at an increased spatial resolution.

EPA will continue to protect and restore the stratospheric ozone layer by reducing the use, emission, import, and production of ozone-depleting substances in the U.S. By 2026, U.S. consumption of HCFCs, chemicals that deplete the Earth's protective ozone layer, will be less than 76.2 tons per year of ozone depletion potential compared to the 2015-2019 target of 1,520 tons per year. As a result of global action to phase out ozone-depleting substances, the ozone layer is expected to recover to its pre-1980 levels by mid-century. As a Party to the Montreal Protocol, the U.S. must incrementally decrease HCFC consumption and production, culminating in a complete HCFC phaseout in 2030. These reductions in consumption and production help protect the stratospheric ozone layer, which shields all life on Earth from harmful solar ultraviolet (UV) radiation. Scientific evidence demonstrates that ozone depleting substances used around the world destroy the stratospheric ozone layer, which raises the incidence of skin cancer, cataracts, and other illnesses through overexposure to increased levels of UV radiation. Under the American Innovation and Manufacturing (AIM) Act, EPA will continue to phase down the production and consumption of hydrofluorocarbons, review and list alternatives that are safer for the ozone layer, as well as facilitate the transition to next-generation technologies.

EPA also will seek to address air quality challenges presented by wildfires. Wildfire smoke can make up approximately 30 percent of total PM_{2.5} emissions in some regions of the U.S., aggravating heart and lung disease and causing premature death. In FY 2024, EPA requests additional resources for air monitoring and will continue to support work that will identify, predict, and communicate where smoke events are occurring, especially for overburdened and underserved communities impacted by wildfire issues. EPA also requests \$7 million for Wildfire Smoke Preparedness Grants, a competitive grant funding to be awarded to tribes, states, public pre-schools, local educational agencies, and non-profit organizations to better prepare buildings for wildfire smoke.

The Agency will continue to develop and make available the necessary technical data and tools to support air quality planning and environmental justice analyses, such as *AirNow*, the Air Quality System, and the National Emissions Inventory. The Agency also will develop new and enhanced applications of environmental justice analytics to inform how power sector rules can mitigate impacts on overburdened communities. This effort will include modeling of power sector emissions down to the county level as well as improved representation of fine particulate matter

²⁵ For additional information, please visit: <http://www3.epa.gov/airmarkets/progressreports/index.html>.

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that includes toxic heavy metals. EPA also will continue to test, evaluate, and refine draft tools for incorporating environmental justice considerations into EPA-issued permits and ensure opportunities for meaningful public involvement in the permit process. Early and meaningful dialogue between a permit applicant and a community is especially important in communities that have historically been underrepresented in the permitting process or that potentially bear a disproportionate burden of an area's pollution to promote environmental justice. Providing specific information about the pollution and related health impacts of a permit action may alleviate community's concerns about the facility or educate the public about other sources of exposure.

Objective 4.2: Reduce Exposure to Radiation and Improve Indoor Air – *Limit unnecessary radiation exposure and achieve healthier indoor air quality, especially for vulnerable populations.*

The FY 2024 Budget includes \$160.1 million and 373.7 FTE for Objective 4.2. This objective is directly supported by the following long-term performance goal in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, prevent 2,250 lung cancer deaths annually through lower radon exposure as compared to the FY 2020 baseline of 1,684 prevented lung cancer deaths.

To improve indoor air and reduce exposure to radiation, EPA leads programs that educate the public about radiation and indoor air quality concerns, including radon, asthma triggers, and poor ventilation. These programs promote public action to reduce potential risks in homes, schools, and workplaces. Because Americans spend most of their time indoors, where pollutant levels are often significantly higher than outdoors, poor indoor air quality is a major health concern. For example, radon is a leading cause of lung cancer, responsible for 21,000 lung cancer deaths annually. Nearly 24 million Americans have asthma, and low-income, communities of color suffer disproportionately. Indoor allergens and irritants play a significant role in making asthma worse and triggering asthma attacks. These concerns have been heightened during the past two years of the COVID pandemic, when people have had to spend more time indoors, elevating the importance of effective ventilation.

To better address these human health risks from indoor air and radiation, the FY 2024 Budget includes \$5.3 million with 12.4 FTE for the Indoor Air Radon Program and \$47.6 million with 71.4 FTE for the Reducing Risks from Indoor Air Program. EPA will continue programs to reduce exposures to radon through home testing and mitigation, promote in-home asthma management, improve air quality in homes and schools, and build capacity for tribes and communities across the country to comprehensively address indoor air risks.

In-home asthma management is a critical component of asthma care, particularly in low-income populations. EPA, in partnership with the Centers for Disease Control (CDC) and the U.S. Department of Housing and Urban Development (HUD) through the Federal Asthma Disparities Action Plan, will support state Medicaid Programs and private health plans to pay for in-home asthma interventions through reimbursement mechanisms²⁶. In addition, EPA will reduce asthma disparities for low-income people and communities of color by supporting public health and housing organizations to train community health workers to deliver in-home asthma interventions

²⁶ For more information, please visit: <https://www.epa.gov/asthma/coordinated-federal-action-plan-reduce-racial-and-ethnic-asthma-disparities>

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and care. In FY 2024, EPA is measuring delivery of technical assistance, tools, and grants to equip community-based programs and the organizations that support them to deliver evidence-based, comprehensive asthma care.

In FY 2024, EPA will collaborate with public and private sector organizations to provide clear and verifiable protocols and specifications for promoting good indoor air quality and support adoption of these protocols and specifications into existing healthy, energy efficiency, and green building programs and initiatives to promote healthy buildings for a changing climate. EPA also will equip the housing sector with guidance to promote the adoption of these best practices with the aim of creating healthier, more energy efficient homes, including for low-income families. EPA also will equip school leaders to make science-based decisions and implement sustainable ventilation, filtration and other indoor air quality improvements for healthy school environments. To reduce the high public health risks from exposure to indoor radon, EPA will co-lead the National Radon Action Plan, a multisector public-private coalition committed to eliminating avoidable radon-induced lung cancer in the U.S. and addressing radon as a health equity challenge. EPA will continue to provide State Indoor Radon Grant funding and technical assistance to tribes and states, with a focus on increasing access to testing and mitigation in underserved communities. This work supports the Administration's Cancer Moonshot Initiative.

EPA responds to radiological emergencies; conducts essential national and regional radiological response planning and training; and develops response plans for radiological incidents or accidents. In FY 2024, EPA will continue to fill gaps in the expertise that is critical for essential preparedness work, restoring critical capacity to meet EPA's core mission. EPA will maintain personnel expertise, capabilities, and equipment readiness of the radiological emergency response program under the National Response Framework and the National Contingency Plan, including the Agency's Radiological Emergency Response Team. EPA also is requesting additional funding of \$1.7 million and 3.4 FTE in the FY 2024 Budget to supports efforts to restore EPA's staff expertise, analysis, and capacity in the Indoor Air Radon Program in order to better lead the federal government's response to radon and to implement the Agency's own multi-pronged radon program. EPA will provide oversight of the Waste Isolation Pilot Plant, including review of the U.S. Department of Energy's plans for additional waste panels and surplus plutonium disposal, to ensure safe long-term disposal of radioactive waste and the continued cleanup of nuclear weapons program legacy sites.

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Goal 5: Ensure Clean and Safe Water for All Communities

Provide clean and safe water for all communities and protect our Nation's waterbodies from degradation.

Introduction

Clean and safe water is a vital resource essential to the protection of human health and is a foundation for supporting healthy communities and a thriving economy. The United States has made great progress over the past 50 years protecting and restoring water resources through legislation such as the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and Marine Protection, Research and Sanctuaries Act (MPRSA). As of January 2023, approximately 85 percent of the public water systems (e.g., 2,988 out of 3,508) with health-based violations as of the end of FY 2017 have returned to compliance. While progress is being made to bring systems into compliance, it is clear that the Nation still faces significant barriers and challenges to ensuring access to clean and safe water for communities. This is particularly the case regarding safe and clean water, as well as impacts from aging infrastructure, legacy lead pipes, cybersecurity threats, climate change, and emerging contaminants of concern. These challenges are distributed unequally, and tens of thousands of homes, primarily in tribal communities and the territories, currently lack access to basic sanitation and drinking water and experience higher pollution levels.

In FY 2024, EPA will continue to work with its tribal, federal, state, and nongovernmental partners to advance science, to provide clean and safe water for all communities, and to protect our Nation's waterbodies from degradation. The FY 2024 Budget includes \$6.373 billion and 3,271.5 FTE for *Goal 5, Ensure Clean and Safe Water for All Communities*. This investment will complement resources provided in the bipartisan Infrastructure Investment and Jobs Act of 2021 (IIJA) and expand the Agency's capacity to protect human health and the environment across the Nation.

Objective 5.1: Ensure Safe Drinking Water and Reliable Water Infrastructure – *Protect public health from the risk of exposure to regulated and emerging contaminants in drinking and source waters by improving the reliability, accessibility, and resilience of the Nation's water infrastructure to reduce the impacts of climate change, structural deterioration, and cyber threats.*

The FY 2024 Budget includes \$4.620 billion and 1,391.7 FTE for Objective 5.1. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, reduce the number of community water systems still in noncompliance with health-based standards since March 31, 2021, from 752 to 500.²⁷
- By September 30, 2026, reduce the number of community water systems in Indian Country still in noncompliance with health-based standards since March 31, 2021, from 110 to 70.
- By September 30, 2026, leverage an additional \$45 billion in non-federal dollars through EPA's water infrastructure finance programs (CWSRF, DWSRF, and WIFIA).²⁸

²⁷ This baseline is a subset of the 3,508 systems, including systems in Indian Country, that have been in long-term noncompliance since September 30, 2017. Technical assistance provided will focus on non-compliant water systems in underserved communities.

²⁸ EPA will ensure a focus on climate resiliency and equity by revising loan guidelines, program guidance, and providing technical assistance.

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- By September 30, 2026, in coordination with other federal agencies, provide access to basic sanitation for an additional 36,500 American Indian and Alaska Native homes.
- By September 30, 2026, provide 2,203 tribal, small, rural, or underserved communities with technical, managerial, or financial assistance to improve operations of their drinking water or wastewater systems.

Safe and Reliable Water

Providing safe and reliable drinking water and wastewater treatment for all communities is a priority for EPA. Aging infrastructure, climate change, cyber threats, and contaminants such as lead and per- and polyfluoroalkyl substances (PFAS) are creating new stresses on the Nation's water systems. In FY 2024, EPA will work to address these challenges through approximately \$4 billion in water infrastructure spending. This includes \$1.639 billion for the Clean Water State Revolving Fund (CWSRF) Program, \$1.126 billion for the Drinking Water State Revolving Fund (DWSRF) Program, and \$80.4 million for the Water Infrastructure Finance and Innovation Act (WIFIA) Program. Also included is approximately \$1.2 billion for grant programs authorized in the America's Water Infrastructure Act (AWIA) of 2018, the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, and the Drinking Water and Wastewater Infrastructure Act of 2021 (DWWIA). Among these resources, \$219 million is dedicated to two grant programs for reducing lead in drinking water and lead testing in schools, an increase of \$163 million over the 2023 enacted level.

As of February 2023, EPA had issued 100 WIFIA loans to communities across the country totaling over \$17 billion in credit assistance to help finance more than \$36 billion for water infrastructure projects. In FY 2024, EPA will continue to use the SRF and WIFIA investments to improve the reliability, accessibility, and resilience of the Nation's water infrastructure. These programs are critical tools for EPA to accelerate water infrastructure investments by leveraging public and private sources of funds, which will maximize the reach of federal funds. To increase access to these funds, EPA will provide training and technical assistance to help disadvantaged communities identify needs, develop projects, apply for funding, design and implement projects, build capacity, and create training and career pathways. In addition, working collaboratively with the state and tribal partners, EPA's SRF programs will make progress toward Justice40, which aims to ensure that federal agencies deliver at least 40 percent of overall benefits of relevant federal investments to overburdened and underserved communities.

In FY 2024, EPA requests \$150 million and 554 FTE to support Drinking Water Programs to better protect communities, especially overburdened and underserved communities. This includes efforts to finalize the Lead and Copper Rule Improvements (LCRI) regulation, which aims to strengthen the Lead and Copper Rule Revisions (LCRR) issued in 2021 to more proactively replace lead service lines and more equitably protect public health. EPA released Guidance for Developing and Maintaining a Service Line Inventory²⁹ in 2022 to support water systems in their efforts to develop lead service line inventories and to provide states with needed information for oversight and reporting to EPA. The guidance provides essential information to help water systems comply with the LCRR requirement to prepare and maintain an inventory of service line materials by October 16, 2024.

²⁹ For additional information, please visit: https://www.epa.gov/system/files/documents/2022-08/Inventory%20Guidance_August%202022_508%20compliant.pdf.

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Resources will support the Agency's efforts to reduce public health and environmental threats from PFAS by finalizing the new drinking water standards in FY 2024. An additional \$42.8 million and 22 FTE is requested to advance EPA's PFAS Strategic Roadmap,³⁰ which will allow EPA to accelerate its efforts to develop various methods and tools to support, states, tribes, and localities in managing PFAS risks, particularly in small and underserved communities. EPA will continue the development of the Drinking Water State-Federal-Tribal Information Exchange System and support state migration to the Compliance Monitoring Data Portal, which enables drinking water utilities and laboratories to report drinking water data electronically.

EPA also will continue to coordinate and support protection of the Nation's critical water infrastructure from terrorist threats and all-hazard events, including cyberattacks. Cyberattacks can compromise the ability of water and wastewater utilities to provide clean and safe water to customers, erode customer confidence, and result in financial and legal liabilities. In FY 2024, EPA will leverage its role as the lead federal agency for cybersecurity in the water sector and work with government partners to close vulnerabilities and mitigate risks to cyberthreats. EPA requests \$25 million for a grant program to help water systems establish and build the necessary cybersecurity infrastructure to address rising threats. EPA also requests \$19.4 million and 25 FTE to implement regulatory action to mitigate the risk of cyberattacks in the water sector as well as increase the Agency's ability to respond to incidents. EPA will continue to provide practical tools, training, and technical assistance to increase resilience to extreme weather events (e.g., drought, flooding, wildfires, hurricanes), malevolent acts (e.g., cyberattacks), and climate change. In FY 2022, almost 4,000 drinking water and wastewater systems and water sector partners received training and technical assistance.

The Drinking Water and Wastewater Infrastructure Act of 2021 (DWWIA) authorized a suite of water programs to help better address drinking water and wastewater issues across the country. Implementation of DWWIA will strengthen the federal government's ability to invest in water infrastructure in communities in every state, so that all residents of the United States can obtain and maintain access to safe drinking water and our Nation's waterways can remain clean and free from pollution. DWWIA strengthens many existing programs within EPA while creating new programs to upgrade aging infrastructure, invest in new technologies, and provide assistance to underserved communities. The FY 2024 Budget provides \$1.2 billion funding for DWWIA at the full authorization level and represents a robust investment in America's drinking water infrastructure.

Objective 5.2 Protect and Restore Waterbodies and Watersheds – *Address sources of water pollution and ensure water quality standards are protective of the health and needs of all people and ecosystems.*

The FY 2024 Budget includes \$1.754 billion and 1,879.7 FTE for Objective 5.2. This objective is directly supported by the following long-term performance goal in the *FY 2022 – 2026 EPA Strategic Plan*:

³⁰ The PFAS Strategic Roadmap may be found at: <https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024>.

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- By September 30, 2026, increase by 41,000 square miles the area of watersheds with surface water meeting standards that previously did not meet standards.³¹

Clean Waterbodies and Watersheds

Pollution and degradation of lakes, rivers, streams, and wetlands endanger aquatic ecosystems, threaten the safety of drinking water, compromise water quality planning and flood protections, impact commercial and recreational opportunities, and reduce the natural benefits these resources provide to communities. Climate change is often the root cause of emerging threats such as drought, sea level rise, and invasive species proliferation. To address these challenges, in FY 2024, EPA will use a suite of CWA core programs to protect and improve water quality and ecosystem health, including the development and implementation of Total Maximum Daily Loads (TMDLs), alternative restoration plans, or other protection approaches for impaired waterbodies; development of national recommended water quality criteria; development of technology-based and water-quality based standards; and implementation of effluent and stormwater discharge permit programs. In FY 2024, funding will support the Agency's work assisting local communities, particularly underserved communities, in their efforts to restore and protect the quality of their waters.

In addition to strengthening its programs, EPA plans to promulgate and update several rules to support clean and safe water. In FY 2024, EPA will seek to complete a rulemaking to establish more protective nutrient limits on wastewater discharges from meat and poultry product facilities. The Agency also will produce effluent limitation guidelines for chemical manufacturers and metal finishing and electroplating companies to address PFAS, for steam electric power generators to address toxics and other pollutants, and for meat and poultry products to address nutrient discharges. The Agency will finalize rules related to improving CWA protections on tribal reservations and consider tribal treaty rights when acting on state Water Quality Standards (WQS) that impact those rights.

EPA also will work collaboratively with public and private sector stakeholders to establish innovative, location-appropriate programs to protect and improve water quality. Additionally, the FY 2024 Budget request would continue to fund the Clean Water Act Research, Investigations, Training, and Information grant authorized by DWWIA in support of Objective 5.2.

Ensuring Clean Water Through Partnerships, Including with Tribes and States

EPA will work with partners and local communities to better safeguard human health and maintain, restore, and improve water quality. In FY 2024, EPA requests \$493.3 million for ongoing categorical grants that support tribal and state implementation of the CWA. This request includes an increase of \$42.4 million above the FY 2023 enacted for the Section 106 Grants Program, which funds actions to identify, assess and mitigate PFAS in the environment and supports programs for the prevention and control of surface and groundwater pollution from point and nonpoint sources. In FY 2022, over 20 thousand square miles of watersheds that previously were not meeting water quality standards, now meet standards.

³¹ The FY 2022-2026 Strategic Plan included a draft July 2021 baseline: 425,198 square miles of watersheds with surface water meeting standards and 652,609 square miles of watersheds with surface water not meeting standards. As of July 2022, the final baseline is 504,605 square miles of watersheds with surface water not meeting standards.

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EPA plays an important role as a convener and facilitator with federal, tribal, state, territorial and local partners to align resources and authorities within regional, watershed, and basin-scaled collaborative networks. In FY 2024, EPA will invest \$682 million and 175.4 FTE in Geographic Programs, funding equal to the current FY 2023 enacted levels, to maintain, restore, and improve water quality for all communities to enjoy. More specifically, EPA's Geographic Programs will deliver technical and financial assistance to solve problems and support healthy climate resilient ecosystems that address water quality, water infrastructure, nutrient pollution, habitat loss, treaty rights, equity, and environmental justice.

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Goal 6: Safeguard and Revitalize Communities

Restore land to safe and productive uses to improve communities and protect public health.

Introduction

EPA collaborates with tribal, state, and local partners to benefit all communities across the United States by cleaning up, addressing health and environmental risks and then returning contaminated sites to productive use, through the Superfund, brownfields, underground storage tanks, and RCRA programs. Cleaning up contaminated land contributes toward the Administration's Justice40 goal, an initiative initially announced in Executive Order (EO) 14008, *Tackling the Climate Crisis at Home and Abroad*,³² and amplified through Equity Plans under E.O. 13985 that outline specific actions to ensure fair program implementation. Communities reuse previously contaminated sites in many ways, including parks, shopping centers, sports fields, wildlife habitat, manufacturing facilities, homes and infrastructure. These reuse outcomes can provide significant benefits for underserved and overburdened communities. EPA and its partners also work to prevent releases of contaminants, reduce waste by increasing materials recovery and recycling, and support sustainable materials management practices. Through prevention activities, EPA protects groundwater from releases from underground storage tanks. Through reduction and recycling activities, EPA not only prevents future contamination but supports a less wasteful circular economy. Additionally, EPA prepares for and responds to environmental emergencies as a mission essential function. A recent example is responding to the Norfolk Southern train derailment in East Palestine, Ohio. EPA On-Scene Coordinators and other personnel were boots-on-the ground since the onset of the incident, conducting air, water, and soil monitoring at the site and working alongside federal, state, and local partners with response efforts to ensure the health and safety of the residents. In FY 2024, EPA requests a total of \$1.301 billion and 3,642.6 FTE to support *Goal 6, Safeguard and Revitalize Communities*. New in FY 2024, discretionary appropriated funding for certain CERCLA programs is not included here as it is transitioned to the Superfund Tax receipts account. Superfund results remain critical to achieving environmental and human health protections for the Nation.

Objective 6.1: Clean Up and Restore Land for Productive Uses and Healthy Communities –
Clean up and restore contaminated sites to protect human health and the environment and build vibrant communities, especially in underserved and overburdened areas.

The FY 2024 Budget includes \$542.5 million and 2,028.5 FTE for Objective 6.1.³³ This objective directly supports the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, bring human exposures under control at an additional 60 Superfund sites.
- By September 30, 2026, complete 225 Superfund cleanup projects that address lead as a contaminant.

³² Executive Order 14008: *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), found at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

³³ Included in Objective 6.1 are the Superfund Remedial and Emergency Response and Removal programs for which appropriated funding is not requested. EPA will transition to funding from Superfund tax receipts for these programs in FY 2024.

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- By September 30, 2026, clean up an additional 650 brownfields properties.
- By September 30, 2026, make an additional 425 RCRA corrective action cleanups Ready for Anticipated Use.
- By September 30, 2026, conduct an additional 35,000 cleanups at Leaking Underground Storage Tank facilities.

Nationally, there are thousands of contaminated sites with challenging and complex environmental problems, including soil, sediment, and groundwater contaminated by chemicals such as PFAS. Superfund cleanups also contribute to reducing lead exposure, a particular health risk for children. Recent research shows Superfund cleanup actions lowered the risk of elevated blood lead levels by roughly 13 to 26 percent for children living within 1.2 miles of a Superfund NPL site where lead is a contaminant of concern.³⁴ While there is no single way to characterize communities located near contaminated sites, the legacy of pollution disproportionately affects communities of color, low-income communities, linguistically isolated populations, and populations with lower rates of high school education. For these reasons, the Superfund program is an important part of the Administration's Justice40 Initiative. By cleaning up and returning contaminated land to productive use, EPA and its partners will reduce the environmental and health effects of exposure to contamination in communities, especially for underserved and overburdened communities.

In FY 2024, EPA proposes to transition from using annual appropriations to funding from Superfund tax receipts for a number of core Superfund programs, starting with continuing critical Superfund pre-construction work such as site characterization, construction/remedial design, and community outreach/engagement, through the implementation of remedial efforts to clean up the sites. This work will complement resources received through the Infrastructure Investment and Jobs Act of 2021 (IIJA) to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) which have provided resources to help eliminate lags in investigation and cleanup as well as foster climate change adaptations to protect at-risk populations. Federal data in a recent Government Accountability Office (GAO) report suggests that approximately 60 percent of Superfund sites overseen by EPA are in areas that are vulnerable to wildfires and different types of flooding – natural hazards that climate change will exacerbate. Nationwide, EPA will aim to control human exposures at 12 additional Superfund sites supporting the 2022-2026 long-term performance goal of 60 sites. To reduce exposure to lead and associated health impacts, EPA will complete at least 45 Superfund lead cleanup projects supporting the 2022-2026 long-term performance goal of 225 projects.

In FY 2024, the Superfund Emergency Response and Removal Program also will transition to Superfund tax receipts. Situations requiring emergency response and removal actions vary greatly in size, nature, and location, and include chemical releases, fires or explosions, natural disasters, and other threats to people from exposure to hazardous substances including from abandoned and uncontrolled hazardous waste sites. EPA's 24-hour-a-day response capability is a cornerstone element of the National Contingency Plan.³⁵ These resources also will help the EPA and Navajo

³⁴ Details can be found at <https://www.epa.gov/environmental-economics/research-environmental-economics-ncee-working-paper-series>.

³⁵ For more information, please refer to: <https://www.epa.gov/emergency-response/national-oil-and-hazardous-substances-pollution-contingency-plan-ncp-overview>.

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Nation to accelerate actions laid out in the 2020 Ten-Year Plan: *Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation*.³⁶

Additionally, in FY 2024, EPA requests an increase of \$11.2 million in funding above the FY 2023 enacted to continue oversight of Federal Facility Superfund site cleanups and to strive to keep pace with the growing number of PFAS cleanups at Department of Defense (DoD), Department of Energy, and other federal agency sites. EPA anticipates additional engagement on non-National Priorities List (NPL) federal facilities on the Federal Agency Hazardous Waste Compliance Docket to address new information on PFAS at these sites and ensure appropriate assessment and referral of these sites to appropriate cleanup programs.

Currently operating facilities or businesses also may have contamination requiring cleanup, performed under the RCRA Corrective Action program. Cleaning up these contaminated sites also serves as a catalyst for economic growth and community revitalization and can help to preserve existing business operations. The 2021 RCRA economic benefits analyses of 79 RCRA cleanups found that these cleaned up facilities support 1,028 on-site businesses, which provide economic benefits including: \$39 billion in annual sales revenue; over 82,000 jobs; and \$7.9 billion in estimated annual employment income.³⁷ The FY 2024 Budget includes \$41.7 million and 174.4 FTE to continue efforts to clean up 3,983 priority contaminated hazardous waste facilities under RCRA, which include highly contaminated and technically challenging sites, and assess others to determine whether cleanups are necessary. In FY 2022, EPA approved 124 RCRA corrective action facilities as ready for anticipated use (RAU), bringing the total number of RCRA RAU facilities to 1,922. In FY 2024, EPA will make an additional 85 sites RAU supporting the FY 2022-2026 long-term performance goal of making 425 sites RAU.

Under the Leaking Underground Storage Tank (LUST) Program, EPA is requesting \$79.7 million and 46.8 FTE, an increase of \$14.7 million and 5.2 FTE above the FY 2023 enacted, for states and tribes to assess and clean up petroleum contamination, including in groundwater.³⁸ EPA collaborates with states to develop and implement flexible, state-driven strategies to reduce the number of remaining LUST sites that have not reached cleanup completion. Through the cooperative efforts between EPA and states, the backlog was reduced by approximately 42 percent between the end of 2008 and October 2022 (from 102,798 to 59,890).³⁹ Requested funds also will support additional tribal cleanup activities in fenceline communities that are immediately adjacent to oil and chemical facilities and UST who are vulnerable to environmental health hazards and climate risks at those facilities.

In FY 2024, EPA requests \$131.0 million for the Brownfields Projects Program that will build on current work to revitalize communities, especially those that are historically overburdened and underserved, by providing financial and technical assistance to assess, clean up, and plan reuse at brownfields sites. In FY 2022, EPA leveraged 14,170 jobs and \$1.8 billion in cleanup and

³⁶ <https://www.epa.gov/sites/default/files/2021-02/documents/nnaum-ten-year-plan-2021-01.pdf>

³⁷ For more information, please refer to: <https://www.epa.gov/hw/redevelopment-economics-rcra-corrective-action-facilities>

³⁸ Almost half of the Nation's overall population and 99 percent of the population in rural areas rely on groundwater for drinking water. (See *EPA 2000 Water Quality Inventory Report*, https://archive.epa.gov/water/archive/web/html/2000report_index.html).

³⁹ For additional information, please see EPA website: <http://www.epa.gov/ust/ust-performance-measures>.

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redevelopment funds and made 662 additional brownfields sites RAU. Activities undertaken in FY 2024 will leverage approximately 13,400 jobs and \$2.6 billion in other funding sources.⁴⁰

In FY 2024, EPA continues to request the \$20 million first provided in the FY 2023 enacted budget to inventory and support the cleanup of contaminated lands in Alaska, many of which were contaminated while not under Alaska Native ownership. Contaminants on some of these lands – arsenic, asbestos, lead, mercury, pesticides, PCBs, and other petroleum products – pose health concerns to Alaskan Native communities, negatively impact subsistence resources, and hamper economic activity.

Objective 6.2: Reduce Waste and Prevent Environmental Contamination – *Prevent environmental pollution by preventing releases, reducing waste, increasing materials recovery and recycling, and ensuring sustainable materials management practices.*

The FY 2024 Budget includes \$346.4 million and 695.4 FTE for Objective 6.2. This objective directly supports the following long-term performance goal in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, increase the percentage of updated permits at RCRA facilities to 80% from the FY 2021 baseline of 72.7%.

Nationwide, EPA and its state partners strive to reach all permitting-related decisions in a timely manner for the approximately 6,700 hazardous waste units (e.g., incinerators, landfills, and tanks) located at 1,300 permitted treatment, storage, and disposal facilities. The goal is to ensure that permits are updated to reflect the latest technology and standards and remain protective under changing conditions, such as climate change, and that communities, including those that are underserved and overburdened, have an equitable opportunity to engage in the permitting process over time. To measure progress, EPA has set an FY 2024 target of 110 permit renewals at hazardous waste facilities supporting the FY 2022-2026 long-term performance goal.

The FY 2024 Budget supports building capacity to implement various aspects of the coal combustion residuals (CCR) program. The Agency has promulgated regulations specifying improved management and disposal practices to protect people and ecosystems. The Agency will continue to work with our stakeholders as we implement these regulations. In FY 2024, EPA will take action to ensure protective management of CCR through the implementation of existing regulations, promulgation of additional regulations to address legacy surface impoundments, and the launch of a federal permitting program. EPA will continue to work with states that wish to establish state CCR permit programs that meet EPA's baseline requirements.

Through its National Recycling Strategy and efforts to advance a more circular economy, EPA is working to develop a stronger, more resilient, and cost-effective U.S. municipal solid waste recycling system.⁴¹ Recycling is an important part of a circular economy, which refers to a system

⁴⁰ U.S. EPA, Office of Land and Emergency Management Estimate. All estimates of outputs and outcomes are supported by the data that is entered by cooperative agreement recipients via EPA's ACRES database.

⁴¹ For additional information, please refer to: <https://www.epa.gov/recyclingstrategy/what-circular-economy#:~:text=EPA's%20circular%20economy%20for%20all,healthy%20communities%20are%20the%20goals.>

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of activities that is restorative to the environment, enables resources to maintain their highest values, designs out waste, and reduces greenhouse gas emissions. Recycling helps alleviate burdens on populations that bear the brunt of poorly run waste management facilities. The FY 2024 Budget includes \$10 million to continue efforts to strengthen the U.S. recycling system, address the global issue of plastic waste, engage communities, and prevent and reduce food loss and waste. EPA will work with recipients of the Solid Waste Infrastructure for Recycling (SWIFR) grants and Recycling Education and Outreach (REO) grants on their projects, which are funded primarily by the IIJA, as well as complete key studies, and identify additional actions needed to support a circular economy for all.

To protect groundwater from releases of petroleum from underground storage tanks (UST), EPA works with its tribal and state partners on prevention. FY 2024 resources include \$42.6 million and 61.8 FTE, an increase of \$3.3 million and 5.5 FTE, for inspecting UST facilities to meet the three-year inspection requirement and assisting states in adopting prevention measures such as delivery prohibition, secondary containment, and operator training. EPA also will continue assessing the compatibility of UST systems with higher blends of ethanol, including E15, in fenceline communities. These activities emphasize bringing UST systems into compliance with release detection and release prevention requirements and minimizing future releases. Due to the increased emphasis on inspections and release prevention requirements, the number of confirmed releases decreased from 6,847 in FY 2014 to 4,568 reported releases in FY 2022.

Objective 6.3: Prepare for and Respond to Environmental Emergencies – *Prevent, prepare, and respond to environmental emergencies and support other agencies on nationally significant incidents, working with Tribes, states, and local planning and response organizations.*

The FY 2024 Budget includes \$412.1 million and 918.7 FTE to support Objective 6.3. This objective directly supports the following long-term performance goal in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, ensure that 40% of annual emergency response and removal exercises that EPA conducts or participates in incorporate environmental justice.

Environmental emergencies are growing in frequency, and the risks they pose are increasing. EPA strives to prevent such emergencies and be ready to respond to those that occur through the Agency's planning and preparedness efforts, in coordination with and through the support of partner organizations. EPA develops regulations and policies that aim to prevent environmental emergencies and enhance the ability of communities and facilities to prepare for and respond to emergencies that occur. EPA also prepares for the possibility of significant incidents by maintaining a trained corps of federal On-Scene Coordinators, Special Teams, and Response Support Corps, and by providing guidance and technical assistance to tribal, state, and local planning and response organizations to strengthen their preparedness. EPA carries out its responsibility under multiple statutory authorities and the National Response Framework, which provides the comprehensive federal structure for managing national emergencies.

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In FY 2024, EPA will continue to chair the U.S. National Response Team⁴² and co-chair the 13 Regional Response Teams, which serve as multi-agency coordination groups supporting emergency responders when convened as incident specific teams. EPA will participate in the development of limited, scenario-specific exercises and regional drills designed to assess national emergency response management capabilities. To bring broader opportunity to participate in these key planning and preparation activities, EPA has set a long-term performance goal of ensuring that 40 percent of annual emergency response and removal exercises that EPA conducts or participates in incorporate environmental justice principles. Based upon higher-than-expected results in the measure's initial year, EPA anticipates meeting this goal ahead of schedule.

EPA will inspect chemical facilities to prevent accidental releases. The objective is to ensure compliance with accident prevention and preparedness regulations at Risk Management Plan (RMP) and Emergency Planning and Community Right-to-Know Act (EPCRA)-regulated facilities and to work with chemical facilities to reduce chemical risks and improve safety to populations, especially in fenceline communities. There are approximately 12,000 chemical facilities that are subject to the RMP regulations. Of these, approximately 1,800 facilities have been designated as high-risk based upon their accident history, quantity of on-site dangerous chemicals stored, and proximity to large residential populations.⁴³ EPA prioritizes inspections at high-risk facilities and will focus on those facilities located in communities with environmental justice concerns and communities with increased climate-related risks (e.g., extreme weather, flooding, wildfires). In addition, EPA is developing a regulatory action to revise the RMP regulations to incorporate consideration of communities with environmental justice concerns and those vulnerable to climate risks.

In FY 2024, EPA will inspect oil facilities to ensure compliance with prevention and preparedness requirements. Inspections involve reviewing the facility's prevention, preparedness, and response plans and discussing key aspects of these plans with facility staff. EPA will increase inspections, enforcement, and compliance assistance at regulated facilities, focusing on high-risk facilities located in communities with environmental justice concerns and communities with increased climate-related risks. EPA also will conduct unannounced exercises at facilities subject to Facility Response Plan regulations, a subset of facilities identified as high risk due to their size and location, to test the facility owner's ability to put preparedness and response plans into action.

⁴² For additional information, please refer to: <https://www.nrt.org/><https://www.nrt.org/>.

⁴³ Located in the EPA RMP database.

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Goal 7: Ensure Safety of Chemicals for People and the Environment

Increase the safety of chemicals and pesticides and prevent pollution at the source.

Introduction

EPA is responsible for ensuring the safety of chemicals and pesticides for the environment and people at all life stages, improving access to chemical safety information, and preventing pollution at the source before it occurs. The Agency focuses on assessing, preventing, and reducing releases and exposures resulting from the manufacture, processing, use, and disposal of chemicals and pesticides and advances the community's right-to-know about these releases and exposures. EPA works to protect the most vulnerable populations from unsafe exposures, especially children, the elderly, and those with environmental justice concerns (including low-income, minority and indigenous populations) who may already be disproportionately harmed by and at risk from other stressors. In addition, EPA works to ensure public access to chemical and pesticide data, analytical tools, and other sources of information and expertise, and promotes source reduction, integrated pest management, and other pollution prevention strategies by organizations and businesses. In total, the FY 2024 Budget includes \$581.3 million and 1,954.0 FTE for *Goal 7: Ensure Safety of Chemicals for People and the Environment*.

In FY 2024, EPA's activities under this goal, as described below, will focus on evaluating, assessing, and managing risks from exposure to new and existing industrial chemicals; continuing to address lead-based paint risks; reviewing and registering new pesticides and new uses for existing pesticides; reducing occupational exposure to pesticides, particularly in disadvantaged communities; and addressing potential risks to threatened and endangered species from pesticides. In addition, EPA will continue working with tribes, state agencies, industry, and communities to implement voluntary efforts to prevent pollution at the source and continue to publish Toxics Release Inventory (TRI) data on chemical releases from industrial facilities for public review and use.

Objective 7.1: Ensure Chemical and Pesticide Safety – *Protect the health of families, communities, and ecosystems from the risks posed by chemicals and pesticides.*

The FY 2024 Budget includes \$470.7 million and 1,677. FTE for Objective 7.1. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, complete at least eight High Priority Substance (HPS) TSCA risk evaluations annually within statutory timelines compared to the FY 2020 baseline of one.
- By September 30, 2026, initiate all TSCA risk management actions within 45 days of the completion of a final existing chemical risk evaluation.
- By September 30, 2026, review 90% of risk management actions for past TSCA new chemical substances reported to the 2020 Chemical Data Reporting Rule (CDR) compared to the FY 2021 baseline of none.⁴⁴

⁴⁴ Changed from "By September 30, 2026, review 90% of risk mitigation requirements for past TSCA new chemical substances decisions compared to the FY 2021 baseline of none."

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- By September 30, 2026, recertify before the expiration date 36% of lead-based paint Renovation, Repair, and Painting (RRP) firms whose certifications are scheduled to expire compared to the FY 2021 baseline of 32%.
- By September 30, 2026, complete 78 pesticide registration review cases with statutory due dates that fall after October 1, 2022.
- By September 30, 2026, consider the effects determinations or protections of federally threatened and endangered species for all new active ingredients in 90% of the risk assessments supporting pesticide registration decisions for new active ingredients compared to the FY 2020 baseline of 50%.
- By September 30, 2026, consider the effects determinations or protections of federally threatened and endangered species in 50% of the risk assessments supporting pesticide registration review decisions compared to the FY 2020 baseline of 27%.
- By September 30, 2026, support Agricultural Worker Protection Standard (WPS) pesticide safety training for 20,000 farmworkers annually compared to the FY 2018-2020 annual average baseline of 11,000.

Toxic Substances Control Act (TSCA)

Under Section 5 of TSCA, EPA is responsible for reviewing all new chemical submissions before they enter commerce to determine whether the chemicals may pose unreasonable risks to human health or the environment.⁴⁵ In FY 2024, EPA will conduct risk assessments and make affirmative determinations on risks for more than 500 new chemical notice and exemption submissions annually.

Under TSCA Section 6,⁴⁶ EPA has responsibility for prioritizing and evaluating at least 20 existing chemicals at a time, assessing additional chemicals at manufacturers' request, and managing identified unreasonable risks. In FY 2024, EPA will continue developing draft and final risk evaluations for High Priority Substances (HPS) and will develop risk management actions in response to unreasonable human health and environmental risks identified in nine of the first 10 risk evaluations. The FY 2024 Budget includes \$131 million and 452 FTE for the EPM TSCA Program, an increase of \$47.9 million and 112.5 FTE above the FY 2023 enacted. Increased funding for the TSCA Program is needed in FY 2024 to advance implementation of the law's requirements. While the Program received additional funding in FY 2023, the full request of \$131 million is needed in FY 2024, else achieving the TSCA goals will be a challenge.

Lead-Based Paint (LBP) Risk Reduction

Also under TSCA, EPA's EPM Lead-Based Paint Risk Reduction Program contributes to the goal of reducing lead exposure and works toward addressing historic and persistent disproportionate

⁴⁵ Actions under TSCA Section 5 may be found at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/actions-under-tsca-section-5>.

⁴⁶ Information regarding the regulation of Chemicals under Section 6(a) of the Toxic Substances Control Act may be found at: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/regulation-chemicals-under-section-6a-toxic-substances>.

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vulnerabilities of certain communities.^{47,48} With \$14.4 million and 62.9 FTE included in the FY 2024 Budget, EPA will continue to reduce exposure to lead in paint and dust by establishing standards governing lead hazard identification and abatement practices; establishing and maintaining a national pool of certified firms and individuals; and providing information and outreach to housing occupants and the public so they can make informed decisions and take actions on lead hazards in their homes.

Pesticide Programs

In FY 2024, consistent with statutory responsibilities,^{49,50,51} EPA will continue to review and register new pesticides and new uses for existing pesticides, and other covered applications under the Pesticide Registration Improvement Extension Act (PRIA). EPA also will act on other registration requests in accordance with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Food, Drug, and Cosmetic Act (FFDCA) standards. Many of these registration actions will be for reduced-risk conventional pesticides and biopesticides, which, once registered and used by consumers, will increase benefits to society and reduce ecological impacts. Additionally, in FY 2024, EPA will continue to reevaluate existing chemicals in the marketplace on a 15-year cycle to ensure the FIFRA standard for registration continues to be met based on current science, including registration review actions subject to the October 1, 2026, deadline for completion.

The *Agricultural Worker Protection Standard* (WPS)⁵² and the *Certification of Pesticide Applicators* (CPA)⁵³ revised rules (finalized in FY 2015 and FY 2017, respectively) are key elements of EPA's strategy for reducing occupational exposure to pesticides. In FY 2024, EPA will continue to support the implementation of the regulations through education and outreach, guidance development, and grant programs, with a particular focus on environmental justice issues in rural communities and the health of farmworkers and their families.

Under the Endangered Species Act (ESA),⁵⁴ EPA is responsible for ensuring that pesticide regulatory decisions will not destroy or adversely modify designated critical habitat or jeopardize the continued existence of species listed as threatened or endangered by the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), referred to collectively as the

⁴⁷ Childhood blood lead levels (BLL) have declined substantially since the 1970s, due largely to the phasing out of lead in gasoline and to the reduction in the number of homes with lead-based paint hazards. The median concentration of lead in the blood of children aged 1 to 5 years dropped from 15 micrograms per deciliter in 1976–1980 to 0.7 micrograms per deciliter in 2013–2014, a decrease of 95%. *See, America's Children and the Environment* (EPA, 2019), found at: <https://www.epa.gov/americaschildrenenvironment>.

⁴⁸ Among children ages 1 to 5 years in families with incomes below poverty level, the 95th percentile blood lead level (BLL) was 3.0 µg/dL, and among those in families at or above the poverty level, it was 2.1 µg/dL, a difference that was statistically significant. *See, America's Children and the Environment* (EPA, 2019), found at: <https://www.epa.gov/americaschildrenenvironment>.

⁴⁹ Summary of Federal Insecticide, Fungicide, and Rodenticide Act: <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act>.

⁵⁰ Summary of the Federal Food, Drug, and Cosmetic Act: <https://www.epa.gov/laws-regulations/summary-federal-food-drug-and-cosmetic-act>.

⁵¹ Pesticide Registration Improvement Extension Act of 2018 (PRIA 4): <https://www.epa.gov/pria-fees>.

⁵² Agricultural Worker Protection Standard: <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

⁵³ Revised Certification Standards for Pesticide Applicators: <https://www.epa.gov/pesticide-worker-safety/revised-certification-standards-pesticide-applicators>.

⁵⁴ For additional information on the Endangered Species Protection Program, see: <https://www.epa.gov/endangered-species/about-endangered-species-protection-program>.

Goal and Objective Overviews

Services. This presents a great challenge given that there are approximately 1,200 active ingredients in more than 17,000 pesticide products—many of which have multiple uses. Endangered species risk assessments are extraordinarily complex, national in scope, and involve comprehensive evaluations that consider risks to over 1,700 listed endangered species and 800 designated critical habitats in the U.S. with diverse biological attributes, habitat requirements, and geographic ranges. In April 2022, EPA released a workplan outlining priorities for coming into compliance with ESA across the numerous types of actions it completes each year as well as the development of several pilots to begin to develop more programmatic approaches for ESA compliance.⁵⁵ EPA prioritized meeting its ESA obligations for all conventional new active ingredient applications whereby all new active ingredient registrations will only be registered under conditions that comply with ESA. EPA also prioritized ESA determinations in response to litigation commitments and court decisions (the ESA workplan includes a list of the FY 2024 litigation commitments regarding ESA determinations and implementations of biological opinions from the Services). The increase EPA received in the FY 2023 enacted budget serves as initial funding to support EPA efforts in meeting these specific workplan commitments. In November 2022, EPA released a workplan update that announced the incorporation of a focus on FIFRA interim ecological mitigations for non-target and ESA listed species, including listed species, that EPA plans to incorporate into registration review and additional initiatives to make even faster progress on some of our ESA goals.⁵⁶

The FY 2024 Budget requests \$75.4 million and 222 FTE for the EPM Pesticide: Protect the Environment from Pesticide Risk Program, an increase of \$26.7 million and 22.5 FTE above the FY 2023 enacted level. Of this increased funding, \$24.8 million and 20.0 FTE will support the ESA compliance work. In FY 2024, EPA will continue to develop and improve existing processes to allow EPA to protect listed species earlier in the regulatory and consultation processes and pursue other major improvements to its ESA compliance work in coordination with the Services.

Objective 7.2: Promote Pollution Prevention – *Encourage the adoption of pollution prevention and other stewardship practices that conserve natural resources, mitigate climate change, and promote environmental sustainability.*

The FY 2024 Budget includes \$111 million and 277 FTE for Objective 7.2. This objective is directly supported by the following long-term performance goals in the *FY 2022 – 2026 EPA Strategic Plan*:

- By September 30, 2026, reduce a total of 6 million metric tons of carbon dioxide equivalent (MMTCO₂e) released attributed to EPA pollution prevention grants.
- By September 30, 2026, EPA's Safer Choice Program will certify a total of 2,300 products compared to the FY 2021 baseline of 1,892 total certified products.

⁵⁵ For additional information, see: https://www.epa.gov/system/files/documents/2022-04/balancing-wildlife-protection-and-responsible-pesticide-use_final.pdf.

⁵⁶ For additional information, see: <https://www.epa.gov/system/files/documents/2022-11/esa-workplan-update.pdf>.

*Goal and Objective Overviews****Pollution Prevention***

EPA's implementation of the Pollution Prevention (P2) Program under the Pollution Prevention Act of 1990⁵⁷ is one of EPA's primary tools for advancing environmental stewardship and sustainability by federal, tribal, and state governments, businesses, communities, and individuals. These practices focus on reducing the amount of any hazardous substance, pollutant, or contaminant entering a waste stream or released into the environment prior to recycling of discarded material, treatment, or disposal, as well as conserving the use of natural resources. P2 grants – a key element of the P2 Program – contributed to the elimination of 18.6 million metric tons of greenhouse gases between 2011 and 2020.⁵⁸ In FY 2024, EPA will continue its work to prevent pollution at the source by awarding targeted P2 grants to tribes, states, and local governments, encouraging the use of products certified by EPA as safer for the environment, encouraging federal procurement of environmentally preferable products, and enhancing the use of TRI data to help prevent pollution and support the Administration's environmental justice priorities.

In FY 2024, EPA will continue to focus on carrying out sector-focused P2 National Emphasis Areas⁵⁹ and enabling the replication and leveraging of business successes supported by the \$5 million P2 grants awarded annually. The Agency will deliver training on green chemistry and engineering solutions to companies, consumers, and communities. EPA also will deliver training and conduct outreach for communities overburdened with pollution, as well as tribal, state, and local governments to help with product and service procurement choices that are environmentally sound and promote human and environmental health. The additional Infrastructure Investment and Jobs Act (IIJA) funding for the Program for FY 2022 to 2026 will significantly increase results and the generation of information on P2 approaches that other businesses can replicate, particularly in disadvantaged communities

In FY 2024, EPA plans to complete the process of updating and strengthening the standards of the Safer Choice (SC) Program,⁶⁰ which advances chemical safety by increasing the availability and identification of products containing ingredients that meet stringent health and environmental criteria, through a notice and comment process after consultation with stakeholders. The Agency will conduct outreach with federal, tribal, state, and local government procurement officials and institutional and industrial purchasers to communicate the benefits of SC and other environmentally preferable products, and work to make SC-certified products more widely available to disadvantaged communities. EPA will continue to partner with organizations serving disadvantaged communities with environmental concerns to help custodial staff and house cleaning companies fight occupational exposure-related conditions (e.g., asthma) and gain access to certified products. EPA also will update the Safer Chemical Ingredients List to enhance transparency and facilitate expansion of safer chemical choices and products, including increasing the number and volume of SC-certified products.⁶¹

The FY 2024 Budget includes \$29 million and 69.2 FTE to support the P2 Program in the EPM appropriation, an increase of \$16 million and 18 FTE above the FY 2023 enacted budget. A portion

⁵⁷ Summary of the Pollution Prevention Act: <https://www.epa.gov/laws-regulations/summary-pollution-prevention-act>.

⁵⁸ For additional information, see: https://www.epa.gov/system/files/documents/2021-07/p2flier_2021_0.pdf.

⁵⁹ P2 National Emphasis Areas may be found at: <https://www.epa.gov/p2/p2-national-emphasis-areas-neas>.

⁶⁰ For additional information on Safer Choice, please visit: <https://www.epa.gov/saferchoice>.

⁶¹ The Safer Chemical Ingredients List (SCIL) may be found at: <https://www.epa.gov/saferchoice/safer-ingredients>.

Goal and Objective Overviews

of this increase will fund a new P2 grant program to support small businesses with transitioning to TSCA compliant practices and mitigate economic impacts. EPA's P2 Program has supported work by P2 grantees, over several years, to work with businesses and industry to identify technically and economically feasible alternatives to toxic chemicals, including some that are the focus of current TSCA risk evaluation and management (e.g., halogenated solvents used in a variety of industries such as degreasing in metal fabrication). Additionally, pollution prevention reporting under the TRI Program collects information on facility-level P2 practices associated with reductions in use and release of toxic chemicals. In FY 2024, EPA will evaluate and integrate P2 case studies and best practices relevant to TSCA risk management by small businesses, clarify technical and economic factors associated with such transitions, and develop and deploy pilot programs to leverage training and ongoing support for small businesses expected to be making transitions in response to TSCA risk management.

Toxics Release Inventory (TRI)

The TRI Program provides data to support partnerships between community groups and companies that has reduced toxic pollution.⁶² With the FY 2024 request of \$14 million and 37 FTE for the TRI/Right to Know Program, EPA will continue research on tools that can quickly and accurately identify disadvantaged communities near TRI facilities, which would support prioritization of P2 initiatives. In addition, in FY 2024, EPA will continue to publish the TRI and use analyses of toxic chemical releases from industrial facilities located near disadvantaged communities with environmental concerns to identify and develop sector specific P2 case studies, best practices, outreach, and training. This will help facilitate adoption of P2 practices in the facilities and in the communities themselves.

⁶² For additional information, please visit the TRI for Communities webpage: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-for-communities>.

Appendix

Program Project by Program Area

U.S. Environmental Protection Agency
FY 2024 Congressional Justification and Annual Performance Plan

PROGRAM PROJECTS BY PROGRAM AREA
(Dollars in Thousands)

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Science & Technology				
Clean Air and Climate				
Clean Air Allowance Trading Programs	\$8,360	\$7,117	\$19,983	\$12,866
Climate Protection	\$6,723	\$8,750	\$10,724	\$1,974
Federal Support for Air Quality Management	\$8,494	\$11,343	\$10,666	-\$677
Federal Vehicle and Fuels Standards and Certification	\$101,348	\$117,341	\$179,617	\$62,276
Subtotal, Clean Air and Climate	\$124,925	\$144,551	\$220,990	\$76,439
Indoor Air and Radiation				
Indoor Air: Radon Program	\$116	\$199	\$173	-\$26
Radiation: Protection	\$2,224	\$1,683	\$2,349	\$666
Radiation: Response Preparedness	\$2,928	\$3,596	\$4,686	\$1,090
Reduce Risks from Indoor Air	\$136	\$278	\$183	-\$95
Subtotal, Indoor Air and Radiation	\$5,404	\$5,756	\$7,391	\$1,635
Enforcement				
Forensics Support	\$14,815	\$15,532	\$18,657	\$3,125
Homeland Security				
Homeland Security: Critical Infrastructure Protection	\$9,941	\$10,852	\$34,205	\$23,353
Homeland Security: Preparedness, Response, and Recovery	\$24,536	\$25,347	\$39,539	\$14,192
Homeland Security: Protection of EPA Personnel and Infrastructure	\$501	\$625	\$501	-\$124
Subtotal, Homeland Security	\$34,978	\$36,824	\$74,245	\$37,421
IT / Data Management / Security				
IT / Data Management	\$2,799	\$3,197	\$3,313	\$116
Operations and Administration				
Facilities Infrastructure and Operations	\$68,347	\$67,500	\$72,043	\$4,543
Pesticides Licensing				
Pesticides: Protect Human Health from Pesticide Risk	\$2,854	\$2,894	\$4,031	\$1,137
Pesticides: Protect the Environment from Pesticide Risk	\$2,487	\$2,334	\$2,339	\$5
Pesticides: Realize the Value of Pesticide Availability	\$941	\$925	\$1,002	\$77

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Subtotal, Pesticides Licensing	\$6,282	\$6,153	\$7,372	\$1,219
Research: Air, Climate and Energy				
Research: Air, Climate and Energy	\$93,402	\$100,448	\$137,835	\$37,387
Research: Safe and Sustainable Water Resources				
Research: Safe and Sustainable Water Resources	\$113,427	\$116,141	\$123,555	\$7,414
Research: Sustainable Communities				
Research: Sustainable and Healthy Communities	\$133,808	\$137,857	\$146,642	\$8,785
Research: Chemical Safety for Sustainability				
Health and Environmental Risk Assessment	\$38,740	\$39,918	\$44,942	\$5,024
Research: Chemical Safety for Sustainability				
<i>Endocrine Disruptors</i>	\$16,325	\$16,353	\$17,530	\$1,177
<i>Computational Toxicology</i>	\$21,349	\$21,606	\$23,128	\$1,522
<i>Research: Chemical Safety for Sustainability (other activities)</i>	\$54,679	\$54,591	\$63,220	\$8,629
Subtotal, Research: Chemical Safety for Sustainability	\$92,353	\$92,550	\$103,878	\$11,328
Subtotal, Research: Chemical Safety for Sustainability	\$131,092	\$132,468	\$148,820	\$16,352
Ensure Safe Water				
Drinking Water Programs	\$4,177	\$5,098	\$6,975	\$1,877
Congressional Priorities (previously named Clean and Safe Water Technical Assistance Grants)				
Congressional Priorities	\$7,492	\$30,751	\$0	-\$30,751
Total, Science & Technology	\$740,947	\$802,276	\$967,838	\$165,562
Environmental Programs & Management				
Clean Air and Climate				
Clean Air Allowance Trading Programs	\$15,423	\$16,554	\$30,535	\$13,981
Climate Protection	\$100,267	\$101,000	\$170,512	\$69,512
Federal Stationary Source Regulations	\$26,821	\$30,344	\$47,468	\$17,124
Federal Support for Air Quality Management	\$148,894	\$147,704	\$356,016	\$208,312
Stratospheric Ozone: Domestic Programs	\$7,937	\$6,951	\$72,152	\$65,201
Stratospheric Ozone: Multilateral Fund	\$8,326	\$9,244	\$18,000	\$8,756
Subtotal, Clean Air and Climate	\$307,667	\$311,797	\$694,683	\$382,886
Indoor Air and Radiation				
Indoor Air: Radon Program	\$2,966	\$3,364	\$5,113	\$1,749

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Radiation: Protection	\$8,244	\$9,088	\$11,638	\$2,550
Radiation: Response Preparedness	\$2,658	\$2,650	\$3,143	\$493
Reduce Risks from Indoor Air	\$12,611	\$13,593	\$47,389	\$33,796
Subtotal, Indoor Air and Radiation	\$26,479	\$28,695	\$67,283	\$38,588
Brownfields				
Brownfields	\$23,716	\$26,189	\$38,626	\$12,437
Compliance				
Compliance Monitoring	\$108,996	\$112,730	\$162,105	\$49,375
Environmental Justice				
Environmental Justice	\$20,455	\$102,159	\$369,106	\$266,947
Enforcement				
Civil Enforcement	\$179,062	\$205,942	\$242,585	\$36,643
Criminal Enforcement	\$55,343	\$62,704	\$66,487	\$3,783
NEPA Implementation	\$17,177	\$20,611	\$25,760	\$5,149
Subtotal, Enforcement	\$251,582	\$289,257	\$334,832	\$45,575
Geographic Programs				
Geographic Program: Chesapeake Bay	\$90,309	\$92,000	\$92,094	\$94
Geographic Program: Gulf of Mexico	\$21,194	\$25,524	\$25,558	\$34
Geographic Program: Lake Champlain	\$19,096	\$25,000	\$25,000	\$0
Geographic Program: Long Island Sound	\$29,758	\$40,002	\$40,005	\$3
Geographic Program: Other				
<i>Lake Pontchartrain</i>	\$1,899	\$2,200	\$2,200	\$0
<i>S. New England Estuary (SNEE)</i>	\$6,017	\$7,000	\$7,078	\$78
<i>Geographic Program: Other (other activities)</i>	\$4,881	\$5,000	\$4,934	-\$66
Subtotal, Geographic Program: Other	\$12,797	\$14,200	\$14,212	\$12
Great Lakes Restoration	\$349,157	\$368,000	\$368,154	\$154
Geographic Program: South Florida	\$6,917	\$8,500	\$8,503	\$3
Geographic Program: San Francisco Bay	\$2,631	\$54,500	\$54,505	\$5
Geographic Program: Puget Sound	\$34,746	\$54,000	\$54,022	\$22
Subtotal, Geographic Programs	\$566,606	\$681,726	\$682,053	\$327
Homeland Security				
Homeland Security: Communication and Information	\$4,054	\$4,692	\$6,051	\$1,359
Homeland Security: Critical Infrastructure Protection	\$873	\$923	\$1,023	\$100
Homeland Security: Protection of EPA Personnel and Infrastructure	\$4,903	\$5,188	\$5,158	-\$30

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Subtotal, Homeland Security	\$9,830	\$10,803	\$12,232	\$1,429
Cross Agency Coordination, Outreach and Education <i>(previously named Information Exchange / Outreach)</i>				
State and Local Prevention and Preparedness	\$14,957	\$15,446	\$23,884	\$8,438
TRI / Right to Know	\$13,064	\$15,052	\$14,018	-\$1,034
Tribal - Capacity Building	\$13,735	\$14,715	\$34,674	\$19,959
Executive Management and Operations	\$55,872	\$56,160	\$67,600	\$11,440
Environmental Education	\$8,303	\$9,500	\$23,972	\$14,472
Exchange Network	\$13,016	\$14,995	\$14,685	-\$310
Small Minority Business Assistance	\$2,564	\$2,056	\$1,996	-\$60
Small Business Ombudsman	\$1,564	\$2,250	\$2,227	-\$23
Children and Other Sensitive Populations: Agency Coordination	\$6,098	\$6,362	\$6,500	\$138
Subtotal, Cross Agency Coordination, Outreach and Education	\$129,173	\$136,536	\$189,556	\$53,020
International Programs				
US Mexico Border	\$2,886	\$2,993	\$5,088	\$2,095
International Sources of Pollution	\$7,220	\$7,323	\$26,044	\$18,721
Trade and Governance	\$6,252	\$5,510	\$7,153	\$1,643
Subtotal, International Programs	\$16,358	\$15,826	\$38,285	\$22,459
IT / Data Management / Security				
Information Security	\$10,450	\$9,142	\$23,889	\$14,747
IT / Data Management	\$90,029	\$91,821	\$105,868	\$14,047
Subtotal, IT / Data Management / Security	\$100,480	\$100,963	\$129,757	\$28,794
Legal / Science / Regulatory / Economic Review				
Integrated Environmental Strategies	\$10,534	\$11,297	\$71,722	\$60,425
Administrative Law	\$5,022	\$5,395	\$6,116	\$721
Alternative Dispute Resolution	\$1,196	\$972	\$2,194	\$1,222
Civil Rights Program	\$10,061	\$12,866	\$31,462	\$18,596
Legal Advice: Environmental Program	\$63,795	\$60,061	\$85,252	\$25,191
Legal Advice: Support Program	\$18,246	\$18,957	\$20,322	\$1,365
Regional Science and Technology <i>(proposed to be moved to Operations and Administration)</i>	\$1,345	\$1,554	\$0	-\$1,554
Science Advisory Board	\$3,854	\$4,155	\$4,124	-\$31
Regulatory/Economic-Management and Analysis	\$16,725	\$17,475	\$16,930	-\$545
Subtotal, Legal / Science / Regulatory / Economic Review	\$130,778	\$132,732	\$238,122	\$105,390
Operations and Administration				
Central Planning, Budgeting, and Finance	\$82,781	\$87,099	\$99,812	\$12,713

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Facilities Infrastructure and Operations	\$291,501	\$283,330	\$305,753	\$22,423
Acquisition Management	\$36,051	\$37,251	\$41,609	\$4,358
Human Resources Management	\$56,709	\$51,261	\$71,093	\$19,832
Financial Assistance Grants / IAG Management	\$29,070	\$30,188	\$34,350	\$4,162
Regional Science and Technology (<i>proposed to be moved from LSRE</i>)	\$0	\$0	\$4,972	\$4,972
Subtotal, Operations and Administration	\$496,113	\$489,129	\$557,589	\$68,460
Pesticides Licensing				
Science Policy and Biotechnology	\$1,185	\$1,811	\$1,627	-\$184
Pesticides: Protect Human Health from Pesticide Risk	\$65,333	\$62,125	\$65,529	\$3,404
Pesticides: Protect the Environment from Pesticide Risk	\$43,688	\$48,704	\$75,391	\$26,687
Pesticides: Realize the Value of Pesticide Availability	\$7,022	\$7,637	\$8,234	\$597
Subtotal, Pesticides Licensing	\$117,227	\$120,277	\$150,781	\$30,504
Research: Chemical Safety for Sustainability				
Research: Chemical Safety for Sustainability	\$178	\$0	\$0	\$0
Resource Conservation and Recovery Act (RCRA)				
RCRA: Corrective Action	\$43,061	\$40,512	\$41,669	\$1,157
RCRA: Waste Management	\$77,838	\$75,958	\$90,634	\$14,676
RCRA: Waste Minimization & Recycling	\$12,603	\$10,252	\$12,668	\$2,416
Subtotal, Resource Conservation and Recovery Act (RCRA)	\$133,502	\$126,722	\$144,971	\$18,249
Toxics Risk Review and Prevention				
Endocrine Disruptors	\$6,629	\$7,614	\$7,680	\$66
Pollution Prevention Program	\$11,988	\$12,987	\$29,009	\$16,022
Toxic Substances: Chemical Risk Management	\$2	\$0	\$0	\$0
Toxic Substances: Chemical Risk Review and Reduction	\$85,218	\$82,822	\$130,711	\$47,889
Toxic Substances: Lead Risk Reduction Program	\$12,404	\$14,359	\$14,437	\$78
Subtotal, Toxics Risk Review and Prevention	\$116,242	\$117,782	\$181,837	\$64,055
Underground Storage Tanks (LUST / UST)				
LUST / UST	\$11,807	\$12,021	\$14,451	\$2,430
Protecting Estuaries and Wetlands				
National Estuary Program / Coastal Waterways	\$33,958	\$40,000	\$32,514	-\$7,486
Wetlands	\$21,103	\$21,754	\$26,671	\$4,917
Subtotal, Protecting Estuaries and Wetlands	\$55,061	\$61,754	\$59,185	-\$2,569
Ensure Safe Water				

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Beach / Fish Programs	\$1,209	\$2,246	\$2,381	\$135
Drinking Water Programs	\$117,205	\$121,607	\$142,583	\$20,976
Subtotal, Ensure Safe Water	\$118,414	\$123,853	\$144,964	\$21,111
Ensure Clean Water				
Marine Pollution	\$8,699	\$10,187	\$12,624	\$2,437
Surface Water Protection	\$217,125	\$224,492	\$267,969	\$43,477
Subtotal, Ensure Clean Water	\$225,825	\$234,679	\$280,593	\$45,914
Congressional Priorities (previously named Clean and Safe Water Technical Assistance Grants)				
Congressional Priorities	\$21,700	\$30,700	\$0	-\$30,700
Total, Environmental Programs & Management	\$2,988,189	\$3,266,330	\$4,491,011	\$1,224,681
Environmental Programs & Management – No Year				
Alaska Contaminated Lands				
Alaska Contaminated Lands	\$0	\$20,000	\$20,000	\$0
Total, Environmental Programs & Management – No Year	\$0	\$20,000	\$20,000	\$0
Inspector General				
Audits, Evaluations, and Investigations				
Audits, Evaluations, and Investigations	\$48,605	\$44,030	\$64,526	\$20,496
Total, Inspector General	\$48,605	\$44,030	\$64,526	\$20,496
Building and Facilities				
Homeland Security				
Homeland Security: Protection of EPA Personnel and Infrastructure	\$7,049	\$6,676	\$6,676	\$0
Operations and Administration				
Facilities Infrastructure and Operations	\$24,681	\$42,076	\$105,009	\$62,933
Total, Building and Facilities	\$31,730	\$48,752	\$111,685	\$62,933
Hazardous Substance Superfund				
Indoor Air and Radiation				
Radiation: Protection	\$2,011	\$2,472	\$3,010	\$538

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Audits, Evaluations, and Investigations				
Audits, Evaluations, and Investigations	\$8,706	\$11,800	\$13,847	\$2,047
Compliance				
Compliance Monitoring	\$1,278	\$1,017	\$1,032	\$15
Enforcement				
Criminal Enforcement	\$8,149	\$7,999	\$8,644	\$645
Forensics Support	\$1,676	\$1,240	\$1,648	\$408
Superfund: Enforcement	\$169,444	\$171,347	\$0	-\$171,347
Superfund: Federal Facilities Enforcement	\$7,263	\$8,192	\$10,366	\$2,174
Subtotal, Enforcement	\$186,532	\$188,778	\$20,658	-\$168,120
Environmental Justice				
Environmental Justice	\$1,065	\$5,876	\$5,888	\$12
Homeland Security				
Homeland Security: Preparedness, Response, and Recovery	\$35,026	\$34,661	\$56,484	\$21,823
Homeland Security: Protection of EPA Personnel and Infrastructure	\$1,201	\$1,029	\$1,530	\$501
Subtotal, Homeland Security	\$36,226	\$35,690	\$58,014	\$22,324
Information Exchange / Outreach				
Exchange Network	\$1,137	\$1,328	\$1,328	\$0
IT / Data Management / Security				
Information Security	\$1,209	\$1,062	\$7,859	\$6,797
IT / Data Management	\$16,075	\$19,764	\$17,727	-\$2,037
Subtotal, IT / Data Management / Security	\$17,284	\$20,826	\$25,586	\$4,760
Legal / Science / Regulatory / Economic Review				
Alternative Dispute Resolution	\$698	\$791	\$880	\$89
Legal Advice: Environmental Program	\$475	\$599	\$477	-\$122
Subtotal, Legal / Science / Regulatory / Economic Review	\$1,173	\$1,390	\$1,357	-\$33
Operations and Administration				
Central Planning, Budgeting, and Finance	\$29,102	\$31,338	\$30,207	-\$1,131
Facilities Infrastructure and Operations	\$76,108	\$65,634	\$71,540	\$5,906
Acquisition Management	\$23,550	\$27,247	\$33,758	\$6,511
Human Resources Management	\$7,253	\$7,419	\$8,751	\$1,332
Financial Assistance Grants / IAG Management	\$4,188	\$4,002	\$4,601	\$599
Subtotal, Operations and Administration	\$140,202	\$135,640	\$148,857	\$13,217

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Research: Sustainable Communities				
Research: Sustainable and Healthy Communities	\$16,562	\$16,937	\$17,364	\$427
Research: Chemical Safety for Sustainability				
Health and Environmental Risk Assessment	\$9,405	\$4,901	\$5,005	\$104
Research: Chemical Safety for Sustainability	\$2,579	\$8,060	\$8,060	\$0
Subtotal, Research: Chemical Safety for Sustainability	\$11,984	\$12,961	\$13,065	\$104
Superfund Cleanup				
Superfund: Emergency Response and Removal	\$239,807	\$195,000	\$0	-\$195,000
Superfund: EPA Emergency Preparedness	\$9,071	\$8,056	\$8,445	\$389
Superfund: Federal Facilities	\$23,911	\$26,189	\$37,405	\$11,216
Superfund: Remedial	\$552,089	\$618,740	\$0	-\$618,740
Subtotal, Superfund Cleanup	\$824,879	\$847,985	\$45,850	-\$802,135
Total, Hazardous Substance Superfund	\$1,249,039	\$1,282,700	\$355,856	-\$926,844
Leaking Underground Storage Tanks				
Enforcement				
Civil Enforcement	\$631	\$661	\$682	\$21
Operations and Administration				
Central Planning, Budgeting, and Finance	\$360	\$457	\$469	\$12
Facilities Infrastructure and Operations	\$922	\$754	\$727	-\$27
Acquisition Management	\$158	\$181	\$136	-\$45
Subtotal, Operations and Administration	\$1,440	\$1,392	\$1,332	-\$60
Underground Storage Tanks (LUST / UST)				
LUST / UST	\$9,707	\$9,991	\$14,665	\$4,674
LUST Cooperative Agreements	\$50,294	\$55,040	\$65,040	\$10,000
LUST Prevention	\$22,045	\$25,780	\$26,669	\$889
Subtotal, Underground Storage Tanks (LUST / UST)	\$82,045	\$90,811	\$106,374	\$15,563
Research: Sustainable Communities				
Research: Sustainable and Healthy Communities	\$312	\$341	\$351	\$10
Total, Leaking Underground Storage Tanks	\$84,427	\$93,205	\$108,739	\$15,534
Inland Oil Spill Programs				
Compliance				

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Compliance Monitoring	\$278	\$649	\$2,152	\$1,503
Underground Storage Tanks (LUST / UST)				
LUST / UST	-\$1	\$0	\$0	\$0
Enforcement				
Civil Enforcement	\$2,660	\$2,565	\$2,665	\$100
Oil				
Oil Spill: Prevention, Preparedness and Response	\$17,136	\$17,501	\$21,412	\$3,911
Operations and Administration				
Facilities Infrastructure and Operations	\$854	\$682	\$641	-\$41
Research: Sustainable Communities				
Research: Sustainable and Healthy Communities	\$782	\$675	\$681	\$6
Total, Inland Oil Spill Programs	\$21,709	\$22,072	\$27,551	\$5,479
State and Tribal Assistance Grants				
State and Tribal Assistance Grants (STAG)				
Infrastructure Assistance: Alaska Native Villages	\$39,605	\$39,686	\$40,000	\$314
Brownfields Projects	\$83,758	\$100,000	\$130,982	\$30,982
Infrastructure Assistance: Clean Water SRF	\$1,018,013	\$1,638,861	\$1,638,874	\$13
Infrastructure Assistance: Drinking Water SRF	\$638,343	\$1,126,101	\$1,126,105	\$4
Infrastructure Assistance: Mexico Border	\$28,711	\$36,386	\$36,386	\$0
Diesel Emissions Reduction Grant Program	\$48,628	\$100,000	\$150,000	\$50,000
Targeted Airshed Grants	\$59,000	\$69,927	\$69,927	\$0
San Juan Watershed Monitoring	\$1,578	\$0	\$0	\$0
Safe Water for Small & Disadvantaged Communities	\$23,173	\$30,158	\$80,005	\$49,847
Reducing Lead in Drinking Water	\$387	\$25,011	\$182,004	\$156,993
Lead Testing in Schools	\$14,431	\$30,500	\$36,500	\$6,000
Drinking Water Infrastructure Resilience and Sustainability	\$0	\$7,000	\$25,000	\$18,000
Technical Assistance for Wastewater Treatment Works	\$12,000	\$27,000	\$18,000	-\$9,000
Sewer Overflow and Stormwater Reuse Grants	\$44,935	\$50,000	\$280,011	\$230,011
Water Infrastructure Workforce Investment	\$3,322	\$6,000	\$17,711	\$11,711
Technical Assistance and Grants for Emergencies (SDWA)	\$0	\$0	\$35,022	\$35,022
Technical Assistance and Grants for Emergencies, Small Systems	\$0	\$0	\$15,000	\$15,000
Source Water Petition Program	\$0	\$0	\$5,000	\$5,000

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Voluntary Connections to Public Water Systems	\$0	\$0	\$20,004	\$20,004
Underserved Communities Grant to Meet SDWA Requirements	\$0	\$0	\$50,030	\$50,030
Small System Water Loss Identification and Prevention	\$0	\$0	\$50,019	\$50,019
Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability	\$0	\$5,000	\$50,022	\$45,022
Indian Reservation Drinking Water Program	\$0	\$4,000	\$50,017	\$46,017
Advanced Drinking Water Technologies	\$0	\$0	\$10,000	\$10,000
Clean Water Act Research, Investigations, Training, and Information	\$0	\$0	\$75,033	\$75,033
Wastewater Efficiency Grant Pilot Program	\$0	\$0	\$20,004	\$20,004
Clean Water Infrastructure Resiliency and Sustainability Program	\$0	\$0	\$25,011	\$25,011
Small and Medium Publicly Owned Treatment Works Circuit Rider Program	\$0	\$0	\$10,000	\$10,000
Grants for Low and Moderate income Household Decentralized Wastewater Systems	\$0	\$0	\$50,022	\$50,022
Connection to Publicly Owned Treatment Works	\$0	\$0	\$40,020	\$40,020
Water Data Sharing Pilot Program	\$0	\$0	\$15,000	\$15,000
Stormwater Infrastructure Technology	\$0	\$3,000	\$5,000	\$2,000
Stormwater Control Infrastructure Project Grants	\$0	\$0	\$10,000	\$10,000
Alternative Water Sources Grants Pilot Program	\$0	\$0	\$25,009	\$25,009
Enhanced Aquifer Use and Recharge	\$0	\$4,000	\$5,000	\$1,000
Water Sector Cybersecurity	\$0	\$0	\$25,000	\$25,000
Recycling Infrastructure	\$0	\$6,500	\$10,000	\$3,500
Wildfire Smoke Preparedness	\$0	\$7,000	\$7,000	\$0
Subtotal, State and Tribal Assistance Grants (STAG)	\$2,015,882	\$3,316,130	\$4,438,718	\$1,122,588
Categorical Grants				
Categorical Grant: Nonpoint Source (Sec. 319)	\$169,189	\$182,000	\$188,999	\$6,999
Categorical Grant: Public Water System Supervision (PWSS)	\$110,742	\$121,500	\$132,566	\$11,066
Categorical Grant: State and Local Air Quality Management	\$226,481	\$249,038	\$400,198	\$151,160
Categorical Grant: Radon	\$8,007	\$10,995	\$12,487	\$1,492
Categorical Grant: Pollution Control (Sec. 106)				
<i>Monitoring Grants</i>	\$18,585	\$18,512	\$26,515	\$8,003
<i>Categorical Grant: Pollution Control (Sec. 106) (other activities)</i>	\$206,719	\$218,488	\$252,925	\$34,437
Subtotal, Categorical Grant: Pollution Control (Sec. 106)	\$225,304	\$237,000	\$279,440	\$42,440
Categorical Grant: Wetlands Program Development	\$17,353	\$14,692	\$15,079	\$387
Categorical Grant: Underground Injection Control (UIC)	\$11,825	\$13,164	\$11,387	-\$1,777

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
Categorical Grant: Pesticides Program Implementation	\$14,102	\$14,027	\$14,027	\$0
Categorical Grant: Lead	\$14,813	\$16,326	\$24,639	\$8,313
Resource Recovery and Hazardous Waste Grants	\$98,146	\$105,000	\$108,247	\$3,247
Categorical Grant: Pesticides Enforcement	\$23,091	\$25,580	\$25,580	\$0
Categorical Grant: Pollution Prevention	\$2,757	\$4,973	\$5,775	\$802
Categorical Grant: Toxics Substances Compliance	\$4,768	\$5,010	\$6,877	\$1,867
Categorical Grant: Tribal General Assistance Program	\$67,520	\$74,750	\$85,009	\$10,259
Categorical Grant: Underground Storage Tanks	\$1,475	\$1,505	\$1,505	\$0
Categorical Grant: Tribal Air Quality Management	\$14,543	\$16,415	\$23,126	\$6,711
Categorical Grant: Environmental Information	\$3,586	\$10,836	\$15,000	\$4,164
Categorical Grant: Beaches Protection	\$9,368	\$10,619	\$9,811	-\$808
Categorical Grant: Brownfields	\$47,278	\$47,195	\$46,954	-\$241
Categorical Grant: Multipurpose Grants	\$2,509	\$0	\$10,200	\$10,200
Subtotal, Categorical Grants	\$1,072,856	\$1,160,625	\$1,416,906	\$256,281
Congressional Priorities (previously named Clean and Safe Water Technical Assistance Grants)				
Congressionally Mandated Projects	\$148	\$16,973	\$0	-\$16,973
Total, State and Tribal Assistance Grants	\$3,088,886	\$4,493,728	\$5,855,624	\$1,361,896
Hazardous Waste Electronic Manifest System Fund				
Resource Conservation and Recovery Act (RCRA)				
RCRA: Waste Management	\$12,482	\$0	\$0	\$0
Operations and Administration				
Central Planning, Budgeting, and Finance	\$149	\$0	\$0	\$0
Total, Hazardous Waste Electronic Manifest System Fund	\$12,631	\$0	\$0	\$0
Water Infrastructure Finance and Innovation Fund				
Ensure Clean Water				
Water Infrastructure Finance and Innovation	\$154,098	\$75,640	\$80,443	\$4,803
Total, Water Infrastructure Finance and Innovation Fund	\$31,620	\$75,640	\$80,443	\$4,803
Subtotal, EPA	\$8,420,261	\$10,148,733	\$12,083,273	\$1,934,540
Cancellation of Funds	\$0	-\$13,300	\$0	\$13,300

Program Project by Program Area

	FY 2022 Final Actuals	FY 2023 Enacted Operating Plan	FY 2024 President's Budget	FY 2024 President's Budget v. FY 2023 Enacted Operating Plan
TOTAL, EPA	\$8,420,261	\$10,135,433	\$12,083,273	\$1,947,840

*For ease of comparison, Superfund transfer resources for the audit and research functions are shown in the Superfund account.

**In addition to annual appropriated resources, the agency expects to receive an estimated \$2.5 billion in Superfund tax receipts in FY 2024 not reflected here. These additional government revenues will support continued Superfund cleanup and enforcement.

***Note that the Hazardous Waste Electronic Manifest Program is funded from fee collections.

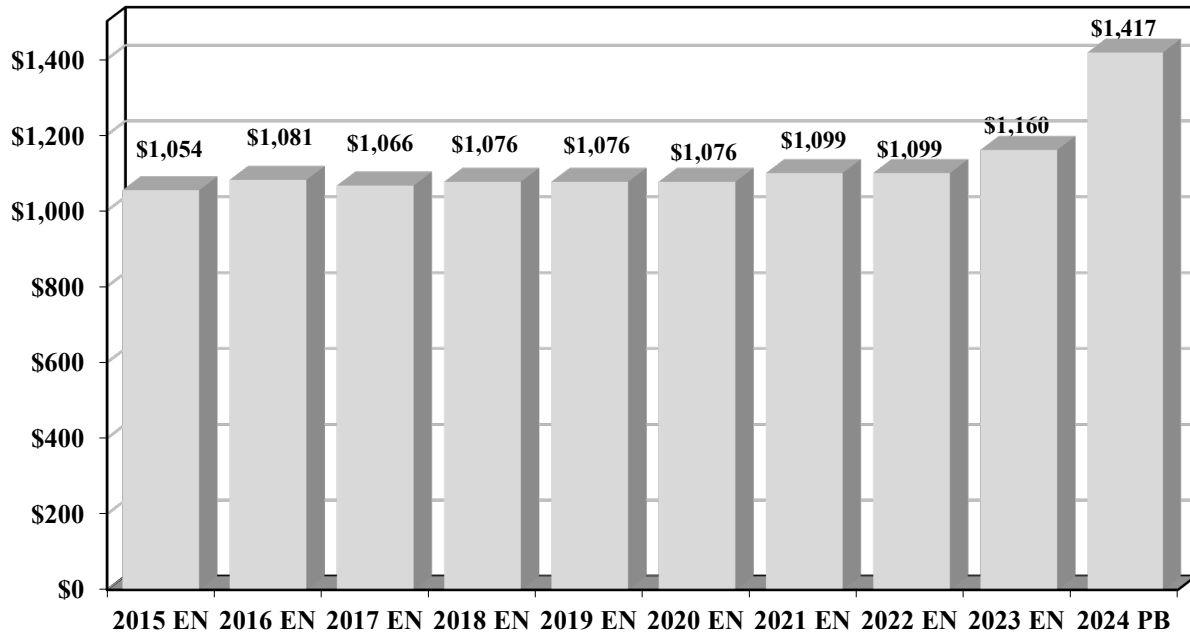
Agency Resources by Appropriation

Summary of Agency Resources by Appropriation
(Dollars in Thousands)

Appropriation	FY 2022 Actuals	FY 2023 Enacted	FY 2024 Pres. Bud.	Delta FY 2024 PB - FY 2023 ENA
Science & Technology (S&T)	\$740,947	\$802,276	\$967,838	\$165,562
Environmental Program & Management (EPM)	\$2,988,189	\$3,286,330	\$4,511,011	\$1,224,681
Inspector General (IG)	\$48,605	\$44,030	\$64,526	\$20,496
Building and Facilities (B&F)	\$31,730	\$48,752	\$111,685	\$62,933
Inland Oil Spill programs (Oil)	\$21,709	\$22,072	\$27,551	\$5,479
Hazardous Substance Superfund (SF) Total	\$1,249,039	\$1,282,700	\$355,856	(\$926,844)
<i>-Superfund Program</i>	\$1,209,986	\$1,239,293	\$310,081	(\$929,212)
<i>-Inspector General Transfer</i>	\$8,706	\$11,800	\$13,847	\$2,047
<i>-Science & Technology Transfer</i>	\$30,347	\$31,607	\$31,928	\$321
Leaking Underground Storage Tanks (LUST)	\$84,427	\$93,205	\$108,739	\$15,534
State and Tribal Assistance Grants (STAG) Total	\$3,088,886	\$4,493,728	\$5,855,624	\$1,361,896
<i>-Categorical Grants</i>	\$1,072,856	\$1,160,625	\$1,416,906	\$256,281
<i>-All other STAG</i>	\$2,016,030	\$3,333,103	\$4,438,718	\$1,105,615
Water Infrastructure Finance and Innovation Fund (WIFIA)	\$154,098	\$75,640	\$80,443	\$4,803
Cancellations	\$0	(\$13,300)	\$0	\$13,300
Agency Total	\$8,420,261	\$10,135,433	\$12,083,273	\$1,947,840

Categorical Program Grants
Categorical Program Grants
 By National Program and Media
 (Dollars in Thousands)

NPM / Grant	FY 2022 Actuals	FY 2023 Enacted	FY 2024 Pres Bud	Delta FY 2024 PB - FY 2023 Enacted	% Change FY 2024 PB - FY 2023 Enacted
<u>Air and Radiation</u>					
State and Local Air Quality Management	\$226,481	\$249,038	\$400,198	\$151,160	60.70%
Tribal Air Quality Management	\$14,543	\$16,415	\$23,126	\$6,711	40.88%
Radon	\$8,007	\$10,995	\$12,487	\$1,492	13.57%
	\$249,031	\$276,448	\$435,811	\$159,363	57.65%
<u>Water</u>					
Pollution Control (Sec. 106)	\$225,304	\$237,000	\$279,440	\$42,440	17.91%
Beaches Protection	\$9,368	\$10,619	\$9,811	(\$808)	-7.61%
Nonpoint Source (Sec. 319)	\$169,189	\$182,000	\$188,999	\$6,999	3.85%
Wetlands Program Development	\$17,353	\$14,692	\$15,079	\$387	2.63%
	\$421,214	\$444,311	\$493,329	\$49,018	11.03%
<u>Drinking Water</u>					
Public Water System Supervision (PWSS)	\$110,742	\$121,500	\$132,566	\$11,066	9.11%
Underground Injection Control (UIC)	\$11,825	\$13,164	\$11,387	(\$1,777)	-13.50%
	\$122,567	\$134,664	\$143,953	\$9,289	6.90%
<u>Hazardous Waste</u>					
Resource Recovery and Hazardous Waste Grants (formerly Hazardous Waste Financial Assistance)	\$98,146	\$105,000	\$108,247	\$3,247	3.09%
Brownfields	\$47,278	\$47,195	\$46,954	(\$241)	-0.51%
Underground Storage Tanks	\$1,475	\$1,505	\$1,505	\$0	0.00%
	\$146,899	\$153,700	\$156,706	\$3,006	1.96%
<u>Pesticides and Toxics</u>					
Pesticides Program Implementation	\$14,102	\$14,027	\$14,027	\$0	0.00%
Lead	\$14,813	\$16,326	\$24,639	\$8,313	50.92%
Toxics Substances Compliance	\$4,768	\$5,010	\$6,877	\$1,867	37.27%
Pesticides Enforcement	\$23,091	\$25,580	\$25,580	\$0	0.00%
	\$56,774	\$60,943	\$71,123	\$10,180	16.70%
<u>Multimedia</u>					
Environmental Information	\$3,586	\$10,836	\$15,000	\$4,164	38.43%
Multipurpose Grants	\$2,509	\$0	\$10,200	\$10,200	N/A
Pollution Prevention	\$2,757	\$4,973	\$5,775	\$802	16.13%
Tribal General Assistance Program	\$67,520	\$74,750	\$85,009	\$10,259	13.72%
	\$76,371	\$90,559	\$115,984	\$25,425	28.08%
Total Categorical Grants	\$1,072,856	\$1,160,625	\$1,416,906	\$256,281	22.08%

*Categorical Grants Overview****Categorical Grants***
(Dollars in Millions)

Note: EN – Enacted, PB – President’s Budget

Categorical Grants

In FY 2024, EPA requests a total of \$1.417 billion for categorical program grants for tribal governments, states, interstate organizations, non-profit organizations, and inter-tribal consortia. This represents a \$256 million, or 22 percent, increase above the FY 2023 enacted level in order to directly support EPA partners. As evidenced in the above chart, categorical grant funding at the EPA has been relatively flat over the last decade, while costs for EPA’s partners have increased. The FY 2024 budget invests in additional categorical grant funding to support our co-implementing partners absorb these costs and advance progress across core environmental programs. The Agency will continue to pursue its strategy of building and supporting tribal, state, and local capacity to implement, operate, and enforce the Nation’s environmental laws. Most environmental laws were designed with a decentralized nationwide structure to protect public health and the environment. In this way, environmental goals will ultimately be achieved through the collective actions, programs, and commitments of tribal, state, and local governments, organizations, and citizens.

In FY 2024, EPA will continue to offer flexibility to tribal and state governments to manage their environmental programs as well as provide technical and financial assistance to achieve mutual environmental goals. First, EPA and its tribal and state partners will continue implementing the National Environmental Performance Partnership System (NEPPS). NEPPS is designed to provide states the flexibility to operate their programs, while continuing to emphasize measuring and reporting of environmental results. Second, Performance Partnership Grants (PPGs) will continue

Categorical Grants Overview

to provide tribes and states the funding flexibility to combine categorical program grants to address environmental priorities and, in some cases, to reduce administrative burden.

HIGHLIGHTS:

State and Local Air Quality Management & Tribal Air Quality Management

The FY 2024 President's Budget requests \$423.3 million for grants to support State and Local and Tribal Air Quality Management programs, an increase of \$157.9 million above the FY 2023 enacted level. Grant funds for State and Local Air Quality Management and Tribal Air Quality Management are requested in the amounts of \$400.2 million and \$23.1 million, respectively. These funds provide resources to multi-state, state, local, and tribal air pollution control agencies for the development and implementation of programs for the prevention and control of air pollution and for the implementation of National Ambient Air Quality Standards (NAAQS) set to protect public health and the environment.

In FY 2024, EPA will continue to work with state and local air pollution control agencies to develop and implement State Implementation Plans (SIPs) for NAAQS, monitor industry compliance with EPA stationary source regulations, develop plans for regional haze, and develop and operate air quality monitoring networks. EPA also will continue to work with federally recognized tribal governments, nationwide, to develop and implement tribal air quality management programs and to build tribal air quality management capacity.

Increased funding requested in both grant programs will help expand the efforts of tribal, state, and local air pollution control agencies to implement their programs and to accelerate immediate on-the-ground efforts to reduce and prevent greenhouse gases, such as expanding state- and local-level deployment of renewable energy sources and energy efficiency programs; ensuring safe and effective oil and gas well pollution management and prevention to reduce volatile organic compounds (VOC) and methane emissions in communities across the Nation; supporting state and local government development of policies and programs to facilitate build-out of electric vehicle charging station infrastructure; and supporting programs to improve transportation options and reduce disproportionate exposure to traffic emissions in underserved communities. Through this funding, EPA will support environmental justice by increasing air quality monitoring in minority, low-income, and marginalized communities that are and have been overburdened with disproportionate environmental or public health risks resulting from exposure to pollution.

State Indoor Air Radon Grants

The FY 2024 request includes approximately \$12.5 million for grants to support State Indoor Air Radon Grant (SIRG) programs, an increase of \$1.5 million above the FY 2023 enacted level. EPA assists tribes and states through the SIRG program, which provides categorical grants to develop, implement, and enhance programs that assess and mitigate radon risk. EPA provides guidance to tribes and states to promote and spread effective strategies for reducing indoor radon public health risks. EPA also works with tribes and states to support targeting SIRG funding to reduce risks for low-income populations that lack resources to mitigate radon risk on their own.

Categorical Grants Overview

Wetlands Grants

In FY 2024, EPA requests \$15.1 million for Wetlands Program Development Grants, which provide technical and financial assistance to tribes, states, and local governments, an increase of \$0.4 million above the FY 2023 enacted level. These grants support development of tribal and state wetland programs that further the national goal of an overall increase in the acreage and condition of wetlands. The Wetland Program Development Grants are EPA's primary resource for supporting tribal and state wetland program development. Wetland grants are used to develop new, or refine existing, tribal and state wetland programs in one or more of the following areas: monitoring and assessment, voluntary restoration and protection, regulatory programs including Section 401 certification and Section 404 assumption, and wetland water quality standards.

Public Water System Supervision Grants

In FY 2024, EPA requests \$132.6 million for Public Water System Supervision (PWSS) grants, an increase of \$11.1 million above the FY 2023 enacted level. These grants assist tribes and states to implement and enforce National Primary Drinking Water Regulations to ensure the safety of the Nation's drinking water resources and to protect public health. Through this funding, EPA and tribal, state, and local governments will build on current efforts to identify, prevent, and protect drinking water from known and emerging contaminants that potentially endanger public health. All these activities help address health-based violations, water supply shortages, and provide operational efficiencies that protect the Nation's infrastructure investment.

Beaches Protection

In FY 2024, EPA requests \$9.8 million for Beaches Protection grants. The beach grant program awards grants to eligible tribes, coastal and Great Lakes states, and territories to improve water quality monitoring at beaches and to notify the public of beach advisories and closings. The beach grant program is a collaborative effort between EPA, tribes, states, territories, and local governments to help ensure that coastal and Great Lakes recreational waters are safe for swimming.

Nonpoint Source (NPS) (Section 319)

In FY 2024, EPA requests approximately \$189 million for Nonpoint Source Program grants to states, territories, and tribes, an increase of \$7.0 million above the FY 2023 enacted level. These grants enable states to use a range of tools to implement their programs including: both non-regulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. EPA and the USDA will work collaboratively in high priority, focused watersheds to address agricultural nonpoint source pollution. The goal of this collaboration is to coordinate agency efforts, thereby increasing conservation on the ground to better protect water resources from nonpoint sources of pollution, including nitrogen and phosphorus.

Pollution Control (Clean Water Act Section 106 Grants)

EPA's FY 2024 request includes \$279.4 million for Water Pollution Control grants to tribal, state, and interstate water quality programs, an increase of \$42.4 million above the FY 2023 enacted level. These water quality funds assist tribal and state efforts to restore and maintain the quality of the Nation's waters through water quality standards, improved water quality monitoring and assessment, implementation of Total Maximum Daily Loads (TMDLs) and other watershed-

Categorical Grants Overview

related plans, and to operate the National Pollutant Discharge Elimination System (NPDES) permit program.

In FY 2024, EPA requests \$26 million of the Section 106 program funding be provided to states and tribes that participate in national- and state-level statistical surveys of water resources and enhancements to state monitoring programs.

Lead Grants

The FY 2024 request includes \$24.6 million to provide support to authorized tribal and state programs that administer training and certification programs for lead professionals and renovation contractors engaged in lead-based paint abatement and renovation, repair, and painting activities, as well as accreditation of training providers, an increase of \$8.3 million above FY 2023 enacted levels. The grants also will provide assistance, using a targeted approach, to tribes and states interested in becoming authorized to run the Renovation, Repair, and Painting (RRP) Program. Further, this assistance supports tribal, state, and local efforts to reduce the disparities in blood lead levels between low-income children and non-low-income children. It also provides targeted support to authorized programs focused on reducing exposure to lead-based paint across the Nation, with an emphasis on better serving EJ communities and other disadvantaged sub-populations. Activities conducted under the Program by EPA and its partners will be aligned with the objectives of the *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts* (Federal Lead Action Plan).

Pollution Prevention

In FY 2024, EPA requests \$5.8 million for the Pollution Prevention (P2) grants program, an increase of \$0.8 million above the FY 2023 enacted level. The P2 Program is one of the Agency's primary tools for advancing national environmental stewardship, pollution reduction and elimination, source reduction, and sustainability goals through targeted and coordinated partnerships and initiatives with federal, tribal, and state government partners, businesses, communities, and individuals. These partnerships and initiatives alleviate environmental problems by achieving: significant reductions in the generation of hazardous releases to air, water, and land; reductions in the use or inefficient use of hazardous materials in support of chemical safety; reductions in the generation of greenhouse gases in support of the Administration's climate change initiatives; and reductions in the use of water through system improvements in support of national infrastructure. As a result of implementing these preventative approaches, the P2 Program helps businesses and others reduce costs and access market opportunities while concurrently advancing the Agency's priorities to take action on climate change, better support EJ communities, and promote sustainability initiatives that support U.S. Government-wide goals and objectives. Increased funding will provide additional technical assistance to businesses, particularly small- and medium-sized firms in underserved communities, to help them: identify, develop, and implement cost-effective approaches for reducing or eliminating pollution at the source; better understand conformance with and access to EPA Recommended Standards and Ecolabels, and have better understanding of and access to EPA's Green Chemistry and sustainability programming.

Categorical Grants Overview

Underground Storage Tanks

In FY 2024, EPA requests \$1.5 million for the Underground Storage Tanks (UST) grants program, matching the FY 2023 enacted level. Grants are provided to states, under the Solid Waste Disposal Act, to improve and enhance UST programs. STAG funds may be used for prevention activities that are not specifically spelled out in the Energy Policy Act (EPAct) of 2005 such as: applying for state program approval to operate the UST Program in lieu of the federal program, updating UST regulations, and providing compliance assistance. EPA anticipates that all states with state program approval will have program renewal by the end of FY 2024. In addition, EPA anticipates several new states will apply and be approved for SPA for the first time by the end of FY 2024.

Underground Injection Control (UIC) Grants

In FY 2024, EPA requests \$11.4 million for the Underground Injection Control (UIC) grants program. Grants are provided to states that have primary enforcement authority (primacy) to implement and maintain UIC programs. The funding allows for the implementation of the UIC program, including for states and tribes to administer UIC permitting programs, provide program oversight, implementation tools, and public outreach, and ensure that injection wells are safely operated. In addition, EPA will continue to process primacy applications and permit applications for Class VI geological sequestration wells.

Multipurpose Grants

In FY 2024, EPA requests \$10.2 million for the Multipurpose Grants program. These flexible grants allow tribal nations and states the flexibility to fund high-priority activities that complement work being funded under established environmental statutes to protect human health and the environment. Recognizing that environmental challenges vary due to factors such as geography, population density, and economic activities, this program provides EPA's partners with flexibility to target funds to their highest priority efforts.

Tribal General Assistance Program Grants

In FY 2024, EPA requests \$85 million in General Assistance Program (GAP) grants to provide tribes with a foundation to build their capacity to address environmental issues on Indian lands, an increase of \$10.2 million above the FY 2023 enacted level. This increase will assist EPA's partnership and collaboration with tribes to address environmental program responsibilities and challenges. Resources will support activities to help tribes transition from capacity development to program implementation and support the development of EPA-Tribal Environmental Plans (ETEPs) to identify EPA and tribal responsibilities for ensuring environmental and public health responsibilities in tribal communities. These grants will assist tribal governments in building environmental capacity to assess environmental conditions, utilize available federal and other information, and build and administer environmental programs tailored to their unique needs.

Pesticide Enforcement and Toxics Substances Compliance Grants

The FY 2024 request includes \$32.5 million to build environmental partnerships with tribes and states that strengthen their ability to address environmental and public health threats from pesticides and toxic substances, an increase of \$1.9 million above the FY 2023 enacted level. The compliance monitoring and enforcement state grants request consists of \$25.6 million for Pesticides Enforcement and \$6.9 million for Toxic Substances Compliance grants. Tribal and state compliance and enforcement grants will be awarded to assist in the implementation of compliance

Categorical Grants Overview

and enforcement provisions of the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The Toxic Substances Compliance Monitoring grant program creates environmental partnerships with states and tribes to strengthen their ability to address environmental and public health threats from toxic substances. More specifically, the Program funds activities that protect the public and the environment from hazards associated with exposure to polychlorinated biphenyls (PCBs), asbestos, and lead-based paint. These grants will support the increase of newly authorized state programs, ensure current authorized states are fully funded to continue work, as well as help address EJ concerns in overburdened and vulnerable communities. Activities conducted under the Program by EPA and its partners associated with lead-based paint exposure protection will be aligned with the objectives of the Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts (Federal Lead Action Plan).

Under the Pesticides Enforcement grant program, EPA provides resources to states and tribes to conduct FIFRA compliance inspections, take appropriate enforcement actions, and implement programs for farm worker protection. The Program also sponsors training for tribal and state inspectors, through the Pesticide Inspector Residential Program (PIRT), and for tribal and state managers through the Pesticide Regulatory Education Program (PREP). These grants will help tribes and states rebuild programmatic capabilities between EPA and its partners, provide vital laboratory capacity, protect the environment from harmful chemicals and pesticides.

Pesticides Program Implementation Grants

The FY 2024 request includes \$14 million for Pesticides Program Implementation grants, matching the FY 2023 enacted level. These resources translate pesticide regulatory decisions made at the national level into results at the local level and help tribal, state, and other pesticide programs stay current with changing requirements, science, and technology, while incorporating EJ principles into their programs. These grants will assist tribes, states, and other partners, including universities, non-profit organizations, other federal agencies, pesticide users, environmental groups, and other entities to assist in strengthening and implementing EPA pesticide programs, focusing on issues such as worker safety activities, including worker protection and certification and training of pesticide applicators, protection of endangered species, protection of water resources from pesticides, protection of pollinators, and promotion of environmental stewardship and [Integrated Pest Management](#) (IPM) related activities. Resources will be used to support state efforts to focus on: worker safety activities, vulnerable and limited English-speaking communities, and grant assistance to tribes and territories. Through this assistance, EPA and its partners better protect human health and the environment from pesticide risk while helping stakeholders realize the value of pesticide availability by considering the economic, social, and environmental costs and benefits of the use of pesticides.

Environmental Information Grants

In FY 2024, EPA requests \$15 million for the Environmental Information Exchange Network (EN) grant program, an increase of \$4.2 million above the FY 2023 enacted level. The EN grants provide funding to federally recognized tribes, states, territories, and tribal consortia to support their participation in the EN. These grants help EN partners acquire and develop the hardware and software needed to connect to the EN; use the EN to collect, report, access, and analyze the data

Categorical Grants Overview

they need with greater efficiency; and integrate environmental data across programs. In collaboration with EPA, the tribes and states accept the EN as the standard approach for EPA and state data sharing. The grant program provides the funding to make this approach a reality. Specifically, grants will be used to develop publishing services, develop desktop and mobile applications that can send and receive data via the network, expand the network to new priority data systems, transition network services to an EPA-hosted cloud-based node, increase data sharing among partners, bring electronic reporting into compliance with the Cross-Media Electronic Reporting Rule (CROMERR) using EPA hosted shared services, as well as other priorities.

In FY 2024, the Exchange Network Grant Program will prioritize increasing the Data and IT management capacity of tribal and territorial partners to increase their participation in the network and support capacity building for tribes and territories with the inclusion of mentoring resources for first-time tribal and territorial applicants. EPA will provide a minimum of \$5.6 million to tribal and territorial grantees from within the overall EN Grant program. Additionally, EPA will continue to work agencywide to improve the leveraging of grant resources that sustain tribal data and IT management activities.

Resource Recovery and Hazardous Waste Grants

In FY 2024, EPA requests \$108.2 million for Resource Recovery and Hazardous Waste (formerly Hazardous Waste Financial Assistance) grants, an increase of \$3.2 million above the FY 2023 enacted level. Resource Recovery and Hazardous Waste grants are used for the implementation of the Resource Conservation and Recovery Act (RCRA) hazardous waste program, which includes permitting, authorization, waste minimization, enforcement, and corrective action activities.

Brownfields Grants

In FY 2024, EPA requests \$46.9 million for the Brownfields grant program that provides assistance to tribes and states to establish core capabilities and enhance their tribal and state Brownfields response programs. These response programs address contaminated brownfields sites that do not require federal action but need assessment and/or cleanup before they can be ready for reuse. Tribes and states may use grant funding under this program for a number of areas, including: to develop a public record, create an inventory of brownfields sites, develop oversight and enforcement authorities, conduct public education and opportunities for public participation, develop mechanisms for approval of cleanup plans and certification that cleanup efforts are completed, purchase environmental insurance, develop tracking and management systems for land use, and conduct site specific activities such as assessments and cleanups at brownfields sites.

Drinking Water State Revolving Fund (DWSRF) Resources

Clean Water State Revolving Fund (CWSRF) Resources

State-by-State Distribution of Actual and Estimated Obligations

Fiscal Years 2022 – 2024 – Dollars in Thousands

The following tables show state-by-state distribution of resources for EPA's two largest State and Tribal Grant Programs, the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund.

Estimated SRF Obligations by State (FY 2022-FY 2024)

Infrastructure Assistance:
Drinking Water State Revolving Fund (SRF)
(Dollars in Thousands)

STATE OR TERRITORY	FY 2022 Actual	FY 2023 ENA	FY 2024 PB
	ACT. OBLIG.	TOT. OBLIG.	EST. OBLIG.
Alabama	\$15,106	-	-
Alaska	\$7,008	-	-
American Samoa	\$2,640	-	-
Arizona	\$12,603	-	-
Arkansas	\$0	-	-
California	\$67,454	-	-
Colorado	\$13,846	-	-
Connecticut	\$7,008	-	-
Delaware	\$7,008	-	-
District of Columbia	\$7,008	-	-
Florida	\$27,585	-	-
Georgia	\$16,661	-	-
Guam	\$2,454	-	-
Hawaii	\$7,008	-	-
Idaho	\$7,008	-	-
Illinois	\$26,439	-	-
Indiana	\$10,711	-	-
Iowa	\$28,528	-	-
Kansas	\$8,130	-	-
Kentucky	\$0	-	-
Louisiana	\$10,489	-	-
Maine	\$7,008	-	-
Maryland	\$12,837	-	-
Massachusetts	\$16,260	-	-
Michigan	\$17,202	-	-
Minnesota	\$10,697	-	-
Mississippi	\$0	-	-
Missouri	\$11,860	-	-
Montana	\$7,008	-	-
Nebraska	\$7,008	-	-
Nevada	\$8,123	-	-
New Hampshire	\$7,008	-	-
New Jersey	\$11,960	-	-
New Mexico	\$700	-	-
New York	\$28,618	-	-
North Carolina	\$37,423	-	-
North Dakota	\$8,927	-	-
Northern Mariana Islands	\$2,754	-	-
Ohio	\$17,624	-	-
Oklahoma	\$10,587	-	-
Oregon	\$9,220	-	-
Pennsylvania	\$21,577	-	-
Puerto Rico	\$0	-	-
Rhode Island	\$7,008	-	-
South Carolina	\$9,075	-	-
South Dakota	\$471	-	-
Tennessee	\$12,172	-	-
Texas	\$0	-	-
Utah	\$7,008	-	-
Vermont	\$7,008	-	-
Virgin Islands, U.S.	\$5,261	-	-
Virginia	\$11,434	-	-
Washington	\$15,655	-	-
West Virginia	\$7,008	-	-
Wisconsin	\$11,943	-	-
Wyoming	\$1,101	-	-

Estimated SRF Obligations by State (FY 2022-FY 2024)

STATE OR TERRITORY	FY 2022 Actual	FY 2023 ENA	FY 2024 PB
	ACT. OBLIG.	TOT. OBLIG.	EST. OBLIG.
Tribal Resources	\$9,795	-	-
Non-state Resources ¹⁻⁷	\$15,901	-	-
TOTAL:	\$659,935	⁸\$1,126,101	⁸\$1,126,105

Notes:

1. New Mexico FY 2022 Drinking Water State Revolving Fund (DWSRF) Base Capitalization Grants was to capitalize the recipient's DWSRF Program to improve source of water supply, replace, or construct finished water storage tanks. Public health benefits would be statewide.
2. Interagency Agreement with the Department of Health & Human Services (HHS) provides service to increase basic drinking water access by providing drinking water infrastructure to Region 8 Indian Tribes.
3. The Cadmus Group LLC provides contracting support for the Drinking Water Infrastructure Needs Survey and HQ contracting that enables Region 9 Direct Implement (DI) of Underground Injection Control programs benefiting tribes and states.
4. Payroll to support Additional Supplemental Appropriation for Disaster Relief Act (ASADRA) Drinking Water Infrastructure Program.
5. EPA staff travel to the Pacific Island Territories to support Additional Supplemental Appropriation for Disaster Relief Act (ASADRA) Drinking Water Infrastructure Program.
6. The Buy America Build America (BABA) implementation and Unregulated Contaminant Monitoring Rule (UCMR) provides small system monitoring costs.
7. Interagency Agreement with the Indian Health Services to install an emergency connection for the Kickapoo Tribe.
8. EPA is in the process of refining the allotment formula which has been adjusted from previous years' allotment.

Estimated SRF Obligations by State (FY 2022-FY 2024)

Infrastructure Assistance:
Clean Water State Revolving Fund (SRF)
(Dollars in Thousands)

	FY 2022 Actual	FY 2023 ENA	FY 2024 PB
STATE OR TERRITORY	ACT. OBLIG.	TOT. OBLIG.	EST. OBLIG.
Alabama	\$13,069	\$15,473	\$17,931
Alaska	\$6,995	\$60,055	49,597
American Samoa	\$6,351	\$4,119	\$8,701
Arizona	\$7,894	\$17,720	\$10,831
Arkansas	\$76	\$9,617	\$10,490
California	\$83,608	\$129,140	\$114,687
Colorado	\$9,349	\$8,515	\$12,827
Connecticut	\$14,358	\$18,507	\$19,645
Delaware	\$5,738	\$14,280	\$7,872
District of Columbia	\$5,738	\$3,720	\$7,872
Florida	\$39,452	\$77,348	\$54,129
Georgia	\$19,761	\$42,209	\$27,113
Guam	\$5,628	\$2,980	\$6,296
Hawaii	\$9,415	\$10,067	\$12,420
Idaho	\$5,681	\$8,280	\$7,872
Illinois	\$52,908	\$56,817	\$72,524
Indiana	\$28,167	\$18,261	\$38,646
Iowa	\$15,743	\$16,255	\$21,703
Kansas	\$10,550	\$27,939	\$14,474
Kentucky	\$14,875	\$22,543	\$20,409
Louisiana	\$12,848	\$18,329	\$17,628
Maine	\$9,047	\$31,694	\$12,413
Maryland	\$27,768	\$29,145	\$38,784
Massachusetts	\$39,682	\$45,492	\$54,444
Michigan	\$50,254	\$65,506	\$68,951
Minnesota	\$21,482	\$26,307	\$29,474
Mississippi	\$105	\$29,827	\$14,447
Missouri	\$32,400	\$38,406	\$44,454
Montana	\$5,681	\$3,720	\$7,872
Nebraska	\$6,038	\$3,876	\$8,202
Nevada	\$5,938	\$21,990	\$7,872
New Hampshire	\$11,680	\$17,507	\$16,025
New Jersey	\$48,061	\$59,090	\$65,529
New Mexico	\$1,423	\$17,672	\$7,872
New York	\$129,000	\$147,274	\$177,001
North Carolina	\$21,093	\$30,961	\$28,941
North Dakota	\$5,681	\$3,720	\$7,872
Northern Mariana Islands	\$3,163	\$2,825	\$4,044
Ohio	\$658	\$78,991	\$90,275
Oklahoma	\$10,394	\$17,058	\$12,955
Oregon	\$13,279	\$24,512	\$18,115
Pennsylvania	\$69,976	\$58,531	\$63,520
Puerto Rico	\$1,619	\$9,883	\$20,915
Rhode Island	\$7,848	\$15,916	\$10,767
South Carolina	\$11,973	\$27,285	\$16,428
South Dakota	\$57	\$3,720	\$7,872
Tennessee	\$16,978	\$15,130	\$23,295
Texas	\$534	\$71,034	\$73,293
Utah	\$6,158	\$16,492	\$8,449
Vermont	\$5,088	\$2,390	\$5,050
Virgin Islands, U.S.	\$5,738	\$5,640	\$7,872
Virginia	\$239	\$22,267	\$32,818
Washington	\$20,122	\$29,232	\$27,887
West Virginia	\$18,219	\$36,951	\$24,998
Wisconsin	\$31,597	\$24,907	\$43,352
Wyoming	\$68	\$3,720	\$7,872

Estimated SRF Obligations by State (FY 2022-FY 2024)

	FY 2022 Actual	FY 2023 ENA	FY 2024 PB
STATE OR TERRITORY	ACT. OBLIG.	TOT. OBLIG.	EST. OBLIG.
Tribal Resources	\$8,256	\$15,515	\$32,777
Non-state Resources ¹⁻⁷	\$3,999	\$2,500	\$2,500
TOTAL:	\$1,018,034	\$1,638,860	\$1,638,874

Notes:

1. Interagency Agreement with the Department of Health & Human Services (HHS) provides services to increase basic sanitation access by providing wastewater infrastructure to Indian Tribes.
2. Obligation Reversals and Other Accounting Adjustments: Compass Financials accounting adjustment entry of Carryover Out and Recoveries Withdrawn.
3. Contract to Tetra Tech Company for Watershed Plan Training.
4. Section 424 P.L. 114.113, which amended the Clean Water Act (CWA), provides EPA the authority to retain up to 0.25 percent of Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) appropriated funds for America Iron and Steel Management and Oversight.
5. Payroll to support Additional Supplemental Appropriation for Disaster Relief Act (ASADRA) Clean Water Infrastructure Program.
6. EPA staff travel to the Pacific Island Territories to support Additional Supplemental Appropriation for Disaster Relief Act (ASADRA) for the Clean Water Infrastructure Program.
7. EPA's Clean Watersheds Needs Survey (CWNS) is an assessment of capital investment needed nationwide for publicly-owned wastewater collection and treatment facilities to meet the water quality goals of the Clean Water Act (CWA).

Infrastructure/STAG Project Financing

Infrastructure and Special Projects Funds

The FY 2024 President's Budget requests a total of \$4.5 billion for EPA's Infrastructure programs in the State and Tribal Assistance Grant (STAG) and Water Infrastructure Finance and Innovation Act (WIFIA) accounts. Infrastructure programs include: the State Revolving Funds (SRFs), WIFIA, Alaska Native Villages, Drinking Water and Wastewater Infrastructure (DWWIA) programs, Brownfields Projects, etc. In addition, in FY 2024, EPA will continue implementing the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN) and America's Water Infrastructure Act of 2018 (AWIA) legislation to address water infrastructure challenges throughout the Nation while promoting resiliency to climate change.

With funds provided to the SRFs and technical assistance funding through EPA's operating programs, in FY 2024, EPA will continue its efforts to build the capacity of local utilities, private investors, and state programs to expand their contribution to the array of funding options to meet future infrastructure needs. Infrastructure and targeted project funding, under the STAG appropriation, provides financial assistance to states, municipalities, and tribal governments to fund a variety of drinking water, wastewater, air, and brownfields environmental projects. These funds help fulfill the federal government's commitment to help our state, tribal, and local partners comply with federal environmental requirements to ensure public health and revitalize contaminated properties.

By providing STAG funds to capitalize the SRF programs, EPA enables the states to provide low-cost loans and grants to municipalities for infrastructure construction. All drinking water and wastewater projects are funded based on state-developed priority lists. Through the SRF set-asides, grants are available to Indian tribes and United States (U.S.) territories for infrastructure projects. The resources included in this budget request will enable the Agency, in conjunction with EPA's state, local, and tribal partners, to achieve important goals related to climate change, equity, and jobs.

Capitalizing Drinking Water and Clean Water State Revolving Funds

The Drinking Water and Clean Water SRF programs demonstrate a true partnership between states, localities, and the federal government. These programs provide federal financial assistance, in the form of capitalization grants, to states to protect the Nation's water resources. These funds are used for the construction of drinking water and wastewater infrastructure and treatment facilities. The state revolving funds are two important elements of the Nation's substantial investment in sewage treatment and drinking water systems, which provide Americans with significant benefits in the form of reduced water pollution and safer drinking water.

This federal investment also will support the continued work of the SRFs in ensuring that small and underserved communities have tools available to help address their pressing water infrastructure and other water quality needs. Many small systems face significant investment needs critical for the public health and environmental safety of the towns and cities they serve. EPA will focus on issues such as: financial planning for future infrastructure investments (applications, exploring financing options, planning and design); expanding current work with states to identify

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additional financing opportunities for small communities; and enhancing collaboration with the United States Department of Agriculture (USDA) on training, technical assistance, and funding opportunities for small communities. To maintain a focus on communities most in need, states are required to provide a portion of their capitalization grant as additional subsidization to disadvantaged communities in their state.

EPA will continue to provide financial assistance for wastewater and other water projects through the Clean Water State Revolving Fund (CWSRF). CWSRF projects also include estuary, storm water, and sewer overflow projects. The dramatic progress made in improving the quality of wastewater treatment since the 1970s is a national success. In 1972, only 78.2 million people were served by secondary or advanced wastewater treatment facilities. As of 2012 (from the most recent Clean Watersheds Needs Survey; updated survey data collection is currently underway), over 99 percent of Publicly Owned Treatment Works, serving 234 million people, use secondary treatment or better. Water infrastructure projects, supported by the program, contribute to direct ecosystem improvements by lowering the amount of nutrients and toxic pollutants in all types of surface waters.

The FY 2024 request includes almost \$1.639 billion in funding for the CWSRF. Total CWSRF funding provided for projects over the life of the program exceeds \$153 billion. This total includes loan repayments, state match dollars, as well as other funding sources. EPA estimates that for every federal dollar that has been contributed, over three dollars have been made available to municipalities to fund infrastructure projects.

The FY 2024 request includes \$1.126 billion in funding for the Drinking Water State Revolving Fund (DWSRF). The total DWSRF assistance, provided over the life of the program, exceeds \$48.5 billion. This total includes loan repayments, state match dollars, as well as other funding sources. EPA estimates that for every federal dollar that has been contributed, approximately two dollars have been made available to municipalities to fund infrastructure projects. The DWSRF helps address the costs of ensuring safe drinking water supplies and assists small communities in meeting their responsibilities.

Tribal communities are often in need of assistance given aging or inadequate sanitation and drinking water infrastructure, which can cause significant public health concerns. To help address this situation, EPA is requesting a tribal funding floor of two percent, or \$30 million for the CWSRF and \$20 million for the DWSRF, whichever is greater, of the funds appropriated in FY 2024.

For FY 2024, EPA requests 10 percent of the CWSRF funds and 14 percent of the DWSRF funds be made available to each state to be used to provide additional subsidy to eligible recipients in the form of forgiveness of principle, negative interest loans, or grants (or a combination of these). Under the DWSRF, EPA requests to allow states to exceed 14 percent if there is an emergency declared for lead. For FY 2024, the EPA will encourage states to utilize the subsidy to assist small drinking water and wastewater systems with standards compliance.

For FY 2024, EPA also is continuing to request a \$12 million set-aside from the DWSRF in order to implement the expansion of the Unregulated Contaminant Monitoring Rule (UCMR) program.

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The 1996 Safe Drinking Water Act (SDWA) established the current UCMR program including statutory provisions that require EPA to coordinate and pay the monitoring costs for a representative selection of small water systems that serve fewer than 10,000 individuals. Section 2021 of the AWIA requires, subject to availability of appropriations and adequate laboratory capacity, all Public Water Systems (PWSs) serving 3,300 to 10,000 persons to monitor under future UCMR cycles and ensure that a nationally representative sample of PWSs serving fewer than 3,300 persons monitor under future UCMR cycles. Traditionally, under this emerging contaminant monitoring program, EPA would require sampling at 800 small water systems that would be selected to represent the over 60,000 small water systems throughout the country. Based on the AWIA revisions to the SDWA, EPA is now preparing to significantly expand the small water system monitoring program. Starting with UCMR 5 (FY 2022-2026), the total number of small systems monitored is expected to increase by 7.5 times, from 800 to approximately 6,000. This will include approximately 5,200 public water systems that serve between 3,300 and 10,000 individuals and a representative selection of 800 systems serving fewer than 3,300 individuals.

The FY 2024 President's Budget supports the authority of the existing small set-aside for the American Iron and Steel (AIS) requirement from the CWSRF to fund future Clean Watershed Needs Surveys (CWNS). The CWNS is a comprehensive assessment of the capital needs to meet the water quality goals in response to Sections 205(a) and 516 of the Clean Water Act (CWA). This assessment and documentation of future needs is critical in the effort to manage and fund our Nation's wastewater infrastructure. A comprehensive CWNS is an important tool for identifying critical water quality needs in communities across the Nation, including small and disadvantaged communities, and opportunities to invest in climate resiliency. The current set-aside of up to \$1.5 million will allow EPA to continue to fully fund the required Clean Water AIS management and oversight activities and provide reliable and sufficient resources to conduct the CWNS.

For FY 2024, EPA also is requesting a seven percent set-aside of the total amount of funding provided for Community Project Funding/ Congressionally Directed Items in order to fund the agency's administration of the projects. This set-aside would provide a dedicated source of administrative funding for any enacted community project funding/ congressionally directed items and will ensure timely awards and proper management over each project's multi-year life cycles. Without dedicated funds, providing timely awards and meeting the workload associated with these projects will be a major challenge.

Water Infrastructure Finance and Innovation Act Program

In FY 2024, EPA will continue to fund the WIFIA program. The FY 2024 request of \$80.4 million will support WIFIA credit assistance to finance drinking water and wastewater infrastructure projects. The WIFIA program will accelerate investment in our Nation's water and wastewater infrastructure by providing supplemental credit assistance to credit worthy nationally and regionally significant water projects. With a request of \$80.4 million in appropriations, including \$72 million in credit subsidy, EPA could potentially provide over \$8 billion in credit assistance and, when combined with other funding sources, help to spur over \$16 billion in total infrastructure investment.¹ It is expected that entities with complex water and wastewater projects will be

¹ This approximation is based on notional calculations. Subsidy cost is determined on a loan-by-loan basis.

Infrastructure Financing

attracted to WIFIA and EPA will work to provide assistance to a diverse set of projects. EPA also will work to assist small and underserved communities with limited ability to repay loans. Through the Water Infrastructure and Resiliency Finance Center, EPA will work to promote public/private collaboration and maintain an ongoing dialogue with the financial community to encourage investment in the water market as well as innovative financing.

Water Infrastructure Grant Programs under Multiple Acts

In FY 2024, EPA proposes approximately \$1.2 billion to implement the grant programs authorized in the America's Water Infrastructure Act of 2018 (AWIA), the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), and the Drinking Water and Wastewater Infrastructure Act of 2021 (DWWIA). DWWIA re-authorizes and strengthens many existing programs under AWIA and WIIN while creating new programs to upgrade aging infrastructure. Implementation of these programs will strengthen the federal government's ability to invest in water infrastructure in communities in every state, so that all Americans can continue to have access to safe drinking water and our Nation's waterways can remain clean and free from pollution.

Among the resources proposed for FY 2024, a combined \$340.7 million is requested to implement four programs originally established under AWIA, including the Drinking Water Infrastructure Resilience, Sewer Overflow and Stormwater Reuse Grants, Technical Assistance for Wastewater Treatment Work, and Water Infrastructure and Workforce Investment. To support the President's priority on addressing lead and other contaminants in drinking water, especially in small and disadvantaged communities, a total of \$298.5 million will be invested in three grant programs originally under WIIN, including the Reducing Lead in Drinking Water, Safe Water for Small and Disadvantaged Communities Drinking Water, and Lead Testing in Schools programs. In addition, EPA requests \$565 million to support 20 new DWWIA grants programs at the full authorization level.

Also included in the FY 2024 request is \$40 million for Alaska native villages for the construction of wastewater and drinking water facilities to address sanitation problems unique to this area of the country. EPA will continue to work with the Department of Health and Human Services' Indian Health Service, the State of Alaska, the Alaska Native Tribal Health Council, and local communities to provide needed financial and technical assistance.

Diesel Emissions Reduction Act Grants

The Diesel Emissions Reduction Act (DERA) program authorizes funding to provide immediate, effective emission reductions from existing diesel engines through engine retrofits, rebuilds, and replacements; switching to cleaner fuels; idling reduction strategies; and other clean diesel strategies. DERA promotes strategies to reduce harmful emissions of NO_x, PM_{2.5}, HC, CO, and CO₂ and protect public health by working with manufacturers, fleet operators, air quality professionals, environmental and community organizations, Tribes, and state and local officials. The FY 2024 President's Budget requests \$150 million in DERA funding to accelerate the reduction of diesel emissions in communities, including targeting its discretionary funding to direct DERA grants and rebates to reduce diesel emissions in priority areas of highly concentrated diesel pollution to tackle the climate change crisis, such as ports and areas with environmental justice concerns.

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Brownfields Projects

The FY 2024 President's Budget requests approximately \$131 million for Brownfields Projects, with a particular focus on those in disadvantaged communities. This investment includes \$15 million dedicated for quality cooperative agreements targeted at communities affected by the retirement of coal-fired plants. With the FY 2024 request, EPA plans to fund assessment cooperative agreements, direct cleanup cooperative agreements, supplemental Revolving Loan Fund cooperative agreements, multipurpose cooperative agreements, and Environmental Workforce Development & Job Training cooperative agreements, as well as provide technical assistance to support states, tribes, and communities. EPA also will support the assessment and cleanup of sites contaminated by petroleum or petroleum products.

In FY 2024, the funding requested is expected to result in the assessment and cleanup of approximately 1,700 brownfields properties located in economically, socially, and environmentally disadvantaged communities.² Using EPA grant dollars, the brownfields grantees will leverage approximately 13,400 jobs and approximately \$2.6 billion in other funding sources. In FY 2024, EPA will continue to foster federal, state, local, and public/private partnerships to return properties to productive economic use in communities.

Mexico Border

The FY 2024 President's Budget requests a total of \$36.4 million for water infrastructure projects along the U.S.-Mexico Border. EPA works collaboratively with federal, state, and local partners and the Mexican water agency – CONAGUA – through the U.S.-Mexico Border Water Infrastructure Program to fund planning, design, and construction of high-priority water and wastewater treatment facilities for underserved communities along the border. Investments in wastewater and drinking water infrastructure in communities on both sides of the U.S.-Mexico Border reduce disease and health care costs because exposure to raw sewage and drinking water contaminants cause acute and chronic illnesses. U.S.-Mexico Border Water Infrastructure projects stimulate local economies through public health-related economic gains, job creation, and increased demand for goods and services.

Recycling Infrastructure

The President's Budget requests \$10 million for a grant program to further assist EPA's partners to achieve progress on the ground in solid waste management infrastructure and post-consumer materials management. This investment will use the authority provided in the Save our Seas 2.0 Act,³ which was passed by Congress in December 2020. The Solid Waste Infrastructure for Recycling (SWIFR) financing program will help reduce waste, reduce greenhouse emissions, increase disadvantaged communities' access to recycling programs and services, and create jobs.

² See Brownfields Assessment Proposal Guidelines for evaluation criteria (<https://www.epa.gov/brownfields/multipurpose-assessment-rlf-and-cleanup-marc-grant-application-resources>.)

³ For additional information, please visit: <https://www.congress.gov/116/plaws/publ224/PLAW-116publ224.pdf>.

*Trust Funds****Trust Funds***
(Dollars in Millions)

Trust Funds Program	FY 2022 Actual Budget		FY 2023 Enacted		FY 2024 President's Budget	
	\$	FTE	\$	FTE	\$	FTE
Superfund ^{1, 2}	\$1,210	2518.0	\$1,239	2,572.4	\$310	2,614.3
Inspector General (Transfers)	\$12	39.8	\$12	42.5	\$14	49.0
Research & Development (Transfers)	\$30	65.4	\$32	63.1	\$32	63.1
Superfund Total	\$1,249	2,623.2	\$1,283	2,678.0	\$356	2,726.4
LUST	\$84	42.3	\$93	49.4	\$109	54.6
Trust Funds Total	\$1,333	2,665.5	\$1,376	2,727.4	\$465	2,781.0

Totals may not add due to rounding.

¹ FTE numbers include all direct and reimbursable Superfund employees, including FTE which are proposed to be transitioned to the Superfund tax receipts in FY 2024. FTE funded from expected tax revenue count against the agency's FTE ceiling.

² In FY 2023 and FY 2024, the Superfund tax receipt resource levels are not included in the totals.

Superfund

In FY 2024, the President's Budget requests a total of \$355.9 million in budget authority and 2,726.4 FTE for EPA's Superfund program. This lower amount accounts for the proposal to transition the Superfund Remedial, Superfund Emergency Response and Removal, and the Superfund Enforcement programs to be funded by the anticipated revenue generated from the Superfund taxes- which is expected to be \$2.5 billion in FY 2024.^{1,2,3} The Superfund Remedial program also will have access to the additional resources from the enacted infrastructure law that will continue to advance work in this important area. EPA will utilize resources to carry out the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

In FY 2024, EPA will continue to address environmental and public health risks resulting from releases or threatened releases of hazardous substances associated with any emergency site, as well

¹ On November 15, 2021, the Infrastructure Investment and Jobs Act [(IIJA), P.L. 117-58] reinstated and modified the excise taxes on certain listed chemicals and imported substances that are used as materials in their manufacture or production one or more of those listed chemicals ("Superfund chemical taxes"). The Superfund chemical taxes went into effect July 1, 2022 and expire on December 31, 2031.

² On August 16, 2022, the Inflation Reduction Act [(IRA), P.L. 117-169] reinstated and modified the taxes on oil and petroleum products. The oil and petroleum taxes went into effect on January 1, 2023.

³ On December 29, 2022, the Consolidated Appropriations Act 2023 (P.L. 117-328) included legislative language that allows all tax receipts collected in the Superfund Trust Fund from the prior fiscal year to be available to implement Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) without further congressional appropriation and designated as emergency funding.

Trust Funds

as over 1,336 active Superfund National Priorities List (NPL) and non-NPL sites.⁴ It also provides funding to pursue responsible parties for cleanup costs, preserving federal dollars for sites where there are no viable contributing parties. As of December 2022, there were 1,788 sites on or deleted from the NPL. Of these, 1,238 sites⁵ have construction completions and 140 partial deletions have occurred at 108 NPL sites. In FY 2022, EPA made 16 Superfund sites ready for anticipated use. Reuse and restoration of Superfund NPL sites directly support President Biden's Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021).⁶ In FY 2024, EPA will continue to prioritize resources to execute its non-delegable, federal responsibility to remediate sites and protect human health, welfare, and the environment.

Of the total funding requested for Superfund, \$45.9 million and 1,276.0 FTE⁷ are for Superfund cleanup programs which include the Superfund Remedial, Emergency Response and Removal, EPA Emergency Preparedness, and Federal Facilities programs. While the FY 2024 Budget proposes to transition funding the Superfund Remedial and Superfund Emergency Response and Removal programs from annual appropriations to the Superfund tax receipts, the FTE in these programs remain in the Agency's FTE ceiling and the pace of work is not expected to be impacted. Other components of the program area, including Superfund EPA Emergency Preparedness and Superfund Federal Facilities will continue to be funded from annual appropriations. Based on an analysis of recent fiscal year data, more than 75 percent of Superfund Remedial and Infrastructure Investment and Jobs Act (IIJA) site-specific funds were obligated to Superfund NPL sites where there is a potential for environmental justice concerns. The Superfund program protects the American public and its resources by cleaning up sites which pose an imminent or long-term risk of exposure and harm to human health and the environment. While conducting cleanup at NPL and non-NPL sites, Superfund remedial construction projects and Superfund removals can enhance our national infrastructure while addressing these harmful exposures.

In FY 2024, the Agency will continue to respond to emergency releases of hazardous substances through the Superfund Emergency Response and Removal program, stabilizing sites, and mitigating immediate threats to keep our communities safe and healthy. The Superfund Remedial program will continue to maintain focus on completing projects at various stages in the response process and endeavor to maximize the use of site-specific special accounts. Special account funds may not be used for sites or uses not specified in the settlement agreement, and as a result special account resources, annually appropriated resources, and Superfund tax receipts are critical to the Superfund program.

⁴ Data provided from EPA's Superfund Enterprise Management System (SEMS) and as posted as of December 22, 2022 on: <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>.

⁵ Starting in FY 2014, the universe of potential site-wide construction completion sites includes final and deleted NPL sites as well as sites with Superfund Alternative Approach (SAA) agreements. Since FY 2014, construction completion has been achieved at nine sites with SAA agreements. Prior to FY 2014, CCL was achieved at nine sites with SAA agreements. For more information about SAA sites, see: <http://www.epa.gov/enforcement/superfund-alternative-approach>.

⁶ For additional information, please refer to: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

⁷ This includes the Superfund Remedial and Superfund Emergency Response and Removal FTE which are proposed to be transitioned to the Superfund tax receipts.

Trust Funds

Of the total funding requested, \$20.7 million and 854.2 FTE⁸ are for Superfund enforcement-related activities. While the FY 2024 Budget proposes to transition funding the Superfund Enforcement program from annual appropriations to the Superfund tax receipts, the FTE in this program remain in the Agency's FTE ceiling. Other components of the program area, including Criminal Enforcement, Forensics Support, and Superfund Federal Facilities Enforcement will continue to be funded from annual appropriations. One of the Superfund program's primary goals is to have responsible parties pay for and conduct cleanups at abandoned or uncontrolled hazardous waste sites. In FY 2022, the Superfund Enforcement program secured private party commitments for cleanup and cost recovery and billed for oversight amounts totaling more than \$670.2 million.

CERCLA authorizes the Agency to retain and use funds received pursuant to an agreement with a potentially responsible party (PRP) to carry out the purpose of that agreement. EPA retains such funds in special accounts and uses them to finance site-specific CERCLA response actions in accordance with the settlement agreement, including, but not limited to, investigations, construction and implementation of the remedy, post-construction activities, and oversight of PRPs conducting the cleanup. Through the use of special accounts, EPA ensures responsible parties pay for cleanup so that the annually appropriated resources from the Superfund Trust Fund are preserved for sites where no viable or liable PRPs have been identified. Through the end of FY 2022, EPA has collected approximately \$8.1 billion from PRPs and earned approximately \$797.6 million in interest. In addition, for those sites that had no additional work planned or costs to be incurred by EPA, EPA has transferred over \$59.0 million to the Superfund Trust Fund for future appropriation by Congress. As of the end of FY 2022, over \$4.8 billion has been disbursed to finance site response actions and approximately \$416.5 million has been obligated but not yet disbursed. EPA has plans to spend approximately \$1.4 billion of currently available special account funds over the next 5 years, but funds also are planned much further into the future to continue activities, such as conducting five-year reviews or remedy optimization.

EPA's Homeland Security work is a component of the federal government's prevention, protection, and response activities. The FY 2024 President's Budget requests approximately \$55.0 million, within the Hazardous Substance Superfund Account, to: maintain the Agency's capacity to respond to incidents that may involve harmful chemical, biological, radiological, and Nuclear (CBRN) substances; develop and maintain Agency expertise and operational readiness for all phases of consequence management following a CBRN incident; and conduct CBRN training for the Agency's responders to improve CBRN preparedness. These resources also support conducting research to enhance response capabilities by developing methods, tools, and information for site characterization, decontamination, waste management, and clearance for priority chemical, biological, and radiological threats all while reducing time and cost and ensuring safety. In addition, EPA will conduct research to generate resources, tools, and training for risk communication outreach, building relationships, and community engagement to empower under-resourced communities and populations with environmental justice concerns.

The FY 2024 President's Budget also includes resources to support agencywide resource management and control functions. This includes essential infrastructure, contract and grant administration, financial accounting, and other fiscal operations. Appropriated resources support

⁸ This includes the Superfund Enforcement FTE which are proposed to be transitioned to the Superfund tax receipts.

Trust Funds

both the activities accomplished with special accounts and those funded with annual appropriations.

In addition, the Agency provides funds for Superfund program research and for auditing. The President's Budget requests \$31.9 million and 63.1 FTE to be transferred to Research and Development. Research will enable EPA's Superfund program to accelerate scientifically defensible and cost-effective decisions for cleanup at complex contaminated Superfund sites and support the development of decontamination techniques for a wide-area CBRN event. The Superfund research program is driven by program needs to reduce the cost of cleaning up Superfund sites, improve the efficiency of characterizing and remediating sites, identify effective remediation technologies, and reduce the scientific uncertainties for improved decision-making at Superfund sites. The President's Budget also requests \$13.8 million and 49.0 FTE to be transferred to the Inspector General for program auditing.

Leaking Underground Storage Tanks

The FY 2024 President's Budget requests \$108.7 million and 54.6 FTE for the Leaking Underground Storage Tank (LUST) Trust Fund program. The Agency, working with states and tribes, addresses public health and environmental threats from releases through detection and cleanup activities. As required by law (42 U.S.C. 6991c(f)), not less than 80 percent of LUST funds appropriated to cleanup will be used for reasonable costs incurred under cooperative agreements with any state to carry out related purposes.

While tank owners and operators are liable for the cost of cleanups at leaking underground storage tank sites for which they have responsibility, EPA and state regulatory agencies are not always able to identify responsible parties and sometimes responsible parties are no longer financially viable or have a limited ability to pay. In those cases, the cost of the site cleanup is distributed among fuel users through a targeted fuel tax, which is available for appropriation from Congress to support leak prevention and the cleanup of sites addressed under the LUST program. For FY 2022, the LUST Trust Fund received more than \$251.6 million in gross tax receipts.

Programs Proposed for Elimination

Eliminated Programs

Eliminated Program Projects¹

Water Quality Research and Support Grants (also referred to as Congressional Priorities) (FY 2024 President's Budget: \$0.0, 0.0 FTE)

This program is proposed for elimination in the FY 2024 President's Budget. Work to advance water quality protection can be accomplished within core statutory programs funded in the Budget request. This program focuses on water quality and water availability research, the development and application of water quality criteria, the implementation of watershed management approaches, and the application of technological options to restore and protect water bodies. For training and technical assistance aspects of the Program, states have the ability to develop technical assistance plans for their water systems using Public Water System Supervision funds and set-asides from the Drinking Water State Revolving Fund (DWSRF). For research and development components of the Program, EPA was instructed by Congress to award grants on a competitive basis, independent of the Science to Achieve Results (STAR) program and give priority to not-for-profit organizations that: conduct activities that are national in scope; can provide a twenty-five percent match, including in-kind contributions; and often partner with the Agency.

San Juan Watershed Monitoring (formerly Gold King Mine Water Monitoring) (FY 2024 President's Budget: \$0.0, 0.0 FTE)

This program is proposed for elimination in the FY 2024 Budget due to project completion. This program was established under Section 5004(d) of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN). EPA and the tribes and states in the San Juan watershed – Arizona, Colorado, New Mexico, Utah, Navajo Nation, Ute Mountain Ute Tribe, and Southern Ute Indian Tribe – work together to monitor water quality and use the best available data and science to identify and implement pollution prevention and restoration projects to improve water quality. Additional programs exist that the states may use to monitor the water quality of the San Juan watershed.

¹ Although not eliminated, funding for Superfund Enforcement, Remedial and Emergency Response and Removal programs is proposed to be transitioned from annual appropriations to Superfund Tax receipts in FY 2024. Work will continue and FTE will be funded through the tax receipts as reimbursable FTE and included in the annual FTE count.

Highlights of Major Program Changes

Highlights of Major Program Changes

Note that the numbers in text descriptions may be rounded

Programs with Increases (in Descending Order)

Drinking Water and Wastewater Infrastructure Act of 2021 (Multiple) (STAG)

(FY 2023 ENA: \$173.8 M/2 FTE; FY 2024 PB: \$1.190 B/121.6 FTE; Change: +\$1.016 B/119.6 FTE)

The Drinking Water and Wastewater Infrastructure Act of 2021 (DWWIA) was enacted to help address numerous drinking water and wastewater issues across the country and the budget requests over \$1 billion in additional funding to support DWWIA programs. Implementation of the Act will enhance the federal government's ability to invest in water infrastructure in communities in every state so that all Americans can continue to have access to safe drinking water and our Nation's waterways can remain clean and free from pollution. DWWIA strengthens many existing programs within EPA while creating new programs to upgrade aging infrastructure, , invest in new technologies, and provide assistance to underserved communities. The FY 2024 Budget proposes \$1.19 billion, an increase of \$1.02 billion above the FY 2023 enacted level, to support all the DWWIA programs. Of this amount, \$565 million is requested to meet the DWWIA authorized levels for 20 new programs. DWWIA program level changes are highlighted below:

- **Sewer Overflow and Stormwater Reuse Grants**

(FY 2023 ENA: \$50 M/0 FTE; FY 2024 PB: \$280 M/5 FTE; Change: +\$230 M/5 FTE)

This program provides funding to address sewer overflows and stormwater management, including reuse, to support the growing need to improve the infrastructure and management of combined sewer overflows, sanitary sewer overflows, and stormwater issues.

- **Reducing Lead in Drinking Water**

(FY 2023 ENA: \$25 M/1 FTE; FY 2024 PB: \$182 M/1 FTE; Change: +\$157 M/0 FTE)

This program was established in the Water Infrastructure Improvements for the Nation Act to reduce the concentration of lead in drinking water. The increase of resources supports the President's priority of addressing lead in drinking water, especially in small and disadvantaged communities.

- **Safe Water for Small and Disadvantaged Communities**

(FY 2023 ENA: \$30.2 M/1 FTE; FY 2024 PB: \$80 M/1 FTE; Change: +\$49.8 M/0 FTE)

This program provides assistance to underserved communities that have no household drinking water or wastewater services or are served by a public water system that violates or exceeds any maximum contaminant level, treatment technique, or action level.

- **Indian Reservation Drinking Water Program**

(FY 2023 ENA: \$4 M/ 0 FTE; FY 2024 PB: \$50 M/8 FTE; Change: +\$46 M/8 FTE)

This program continues to develop the Indian reservation drinking water grant program (which has not been appropriated to date), extending to projects on Indian reservations that connect, expand, or repair existing public water systems, as well as ambient water quality or sanitation projects for treatment works.

- **Midsize and Large Drinking Water System Infrastructure**

(FY 2023 ENA: \$5 M/0 FTE; FY 2024 PB: \$50 M/10 FTE; Change: +\$45 M/10 FTE)

Highlights of Major Program Changes

This program supports the resilience and sustainability of public water systems serving more than 10,000 people; including projects that increase resilience to natural hazards, cybersecurity vulnerabilities, or extreme weather events.

- **Drinking Water Infrastructure Resilience**
(FY 2023 ENA: \$7 M; FY 2024 PB: \$25 M; Change: +\$18 M)
This program supports water infrastructure in communities, ensuring access to safe drinking water and supports the President's priority of assisting eligible entities in the planning, design, construction, implementation, operation, or maintenance of a program or project that increases resilience to natural hazards.
- **Water Infrastructure Workforce Investment**
(FY 2023 ENA: \$6 M; FY 2024 PB: \$17.7 M; Change: +\$11.7 M)
This program provides competitive grants to promote water utility workforce development and increase public awareness of water utilities and careers.
- **Stormwater Infrastructure Technology**
(FY 2023 ENA: \$3 M/0 FTE; FY 2024 PB: \$5 M/1 FTE; Change: +2 M/1 FTE)
This competitive grant program aims at creating between three and five centers of excellence for new and emerging stormwater control infrastructure technologies.

Environmental Justice (EPM and SF)

(FY 2023 ENA: \$108 M/223.6 FTE; FY 2024 PB: \$375 M/264.6 FTE; Change: +\$267 M/41 FTE)
This program leads and coordinates the Agency's efforts to address the needs of vulnerable communities by decreasing environmental burdens, increasing environmental benefits, and building collaborative partnerships with all stakeholders to build healthy, sustainable communities. The increase in resources and FTE will support the Agency's newly created national program manager, the Office of Environmental Justice and External Civil Rights (OEJECR), to significantly expand its base activity and agencywide coordination required across the EJ Program. Increased funding also will be provided to three grant programs and a training program. This increase will fully build out the Thriving Community Technical Assistance Centers to support capacity building of communities and their partners to advance equity and justice in their communities and support ongoing response efforts for Red Hill, HI to protect communities and ensure safe drinking water. Furthermore, additional resources are provided to: 1) support and improve the national EJ screening and mapping tool (EJScreen), with a focus on identifying and adding new data sources to the tool and enhancing user interface elements; 2) update EPA's IT systems to support the Climate and Economic Justice Screening tool and the EJ Clearinghouse; and 3) support for the interagency coordination, including the National Environmental Justice Advisory Council, the White House Environmental Justice Advisory Council, and other federal advisory council activities.

Federal Support for Air Quality Management (EPM and S&T)

(FY 2023 ENA: \$159 M/879.3 FTE; FY 2024 PB: \$366.7 M/1079.7 FTE; Change: +\$207.6 M/200.4 FTE)

This program supports development of State Implementation Plans (SIPs) through modeling and other tools and assists states in implementing, attaining, maintaining, and enforcing the National Ambient Air Quality Standards (NAAQS) for criteria pollutants. The increase in funding will support critical work to implement climate and clean air regulations and programs, including

Highlights of Major Program Changes

activities such as reviewing and implementing state plans required under forthcoming GHG standards, priority NAAQS work, taking timely action on SIPs, reducing the SIP backlog, air monitoring and analysis, and environmental justice activities. Additional resources also will support the development and implementation of a community air quality monitoring and notification program to provide real-time data to the public in areas with greatest exposure to harmful levels of pollution. This increase supports work to reduce GHG emissions to tackle the climate crisis and ensure equitable environmental outcomes to advance environmental justice.

Categorical Grant: State and Local Air Quality Management (STAG)

(FY 2023 ENA: \$249 M; FY 2024 PB: \$400.2 M; Change: +\$151.2 M)

This program provides funding for state air programs, as implemented by state, multi-state, and local air agencies. This increase in grant resources will help expand the efforts of air pollution control agencies to implement their programs and to accelerate immediate on-the-ground efforts to reduce greenhouse gas emissions. The increase also will enhance the resiliency, capacity, and capability of air monitoring systems for National Ambient Air Quality Standards (NAAQS) and local-scale monitoring and will support additional air quality monitoring in disadvantaged communities suffering from disproportionate impact of traffic emissions.

Climate Protection (EPM and S&T)

(FY 2023 ENA: \$109.8 M/216.1 FTE; FY 2024 PB: \$181.2 M/256.7 FTE; Change: +\$71.5 M/40.6 FTE)

This program uses an integrated approach of regulations, partnerships, and technical assistance to tackle the climate crisis at home and abroad. The increase in funding and FTE will help reduce greenhouse gas (GHG) emissions while also addressing environmental justice. This increase enables EPA to take strong action on CO₂ and methane as well as high-global warming potential climate pollutants, hydrofluorocarbons (HFCs), as directed under the AIM Act; restores the capacity of EPA's climate partnership programs; and strengthens EPA's capacity to apply its modeling tools and expertise across a wide range of high priority work areas including supporting U.S. participation in the Paris Agreement. A portion of this investment will also support EPA working with NASA on prototyping capabilities for a GHG monitoring and information system to make data more accessible and usable to federal, state, and local governments, researchers, the public, and other users. Additionally, the increase supports implementation of the GHG Reduction Fund under the Inflation Reduction Act.

Stratospheric Ozone: Domestic Programs (EPM)

(FY 2023 ENA: \$7 M/28.2 FTE; FY 2024 PB: \$72.2 M/52.2 FTE; Change: +\$65.2 M/24 FTE)

This program implements actions to help protect both the climate system and the stratospheric ozone layer, which shields all life on Earth from harmful solar ultraviolet (UV) radiation. This increase in resources and FTE supports the implementation of provisions in the American Innovation and Manufacturing (AIM) Act to phase down the use of hydrofluorocarbons, to facilitate U.S. entry to the Kigali Amendment to the Montreal Protocol, and to restore the Agency's capacity to tackle the climate crisis. A portion of this increase is to develop a grant program that will provide grants to small businesses for the purchase of new specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance.

Highlights of Major Program Changes

Federal Vehicle and Fuels Standards and Certifications (S&T)

(FY 2023 ENA: \$117.3 M/323.5 FTE; FY 2024 PB: \$179.6 M/370.3 FTE; Change: +\$62.3 M/46.8 FTE)

This program provides critical resources for EPA's core greenhouse gas (GHG) regulatory and compliance work in the mobile sector. It also supports the establishment of federal GHG emissions standards for passenger cars and light trucks to secure pollution reductions through Model Year 2026. The increase in funding and FTE will support program activities to address the climate crisis, including the development of analytical methods, regulations, and analyses to support climate protection by controlling GHG emissions from cars and trucks. A portion of the funding will support EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL) to carry out its mission-critical work of certifying vehicle compliance. This program change also invests in the maintenance, repair and replacement of aging test equipment at NVFEL.

Integrated Environmental Strategies (EPM)

(FY 2023 ENA: \$11.3 M/55.5 FTE; FY 2024 PB: \$71.7 M/91 FTE; Change: +\$60.4 M/35.5 FTE)

This program advances the Agency's mission by focusing on cross-media environmental concerns. This program focuses on four major areas – permitting, smart sectors, community-driven environmental protection, and climate adaptation program – to improve delivery of environmental protection across multiple media and stakeholders. The increase in funding and FTE will support the coordination, streamlining, oversight, automation, and integration of EJ and climate change into environmental permitting. The increase also will advance climate adaptation efforts to support increased resilience of EPA's programs and strengthen the adaptive capacity of tribes, states, territories, local governments, communities, and businesses.

Compliance Monitoring (EPM, OIL, and SF)

(FY 2023 ENA: \$114.4 M/478.9 FTE; FY 2024 PB: \$165.3 M/520.6 FTE; Change: +\$50.9 M/41.5 FTE)

This program supports both compliance with federal environmental laws and efforts to identify noncompliance. The increase in resources and FTE will allow EPA to accelerate the modernization of the Integrated Compliance Information System and enhance its integration with the Enforcement and Compliance History Online web-based services, facilitating better access of compliance data and community information to EPA, states, and to the public. The increase also will rebuild EPA's inspector cadre, enhance programmatic capacities for inspections and case development, as well as supplement the program's training and travel budget. This investment will advance EPA's efforts to address compliance concerns in environmental justice communities.

Diesel Emissions Reduction Grant Program (STAG)

(FY 2023 ENA: \$100 M; FY 2024 PB: \$150 M; Change: + \$50 M)

This program provides effective emission reductions from existing diesel engines through engine retrofits, rebuilds, and replacements; switching to cleaner fuels; idling reduction; and other strategies. This increase in grant funding will expand grant offerings and rebates to reduce harmful diesel emissions, with a focus on priority areas including school buses, ports, and vulnerable communities.

Highlights of Major Program Changes

Toxic Substances: Chemical Risk Review and Reduction (EPM)

(FY 2023 ENA: \$82.8 M/360.8 FTE; FY 2024 PB: \$130.7 M/534.8 FTE; Change: +\$47.9 M/174 FTE)

Under the Toxic Substances Control Act (TSCA), EPA is responsible for ensuring the safety of chemicals that are already in or are entering into commerce and addressing unreasonable risks to human health and the environment. The increase in resources and FTE will expand the program's capacity and support the implementation of the TSCA, as amended in 2016, to meet statutory mandates for chemical risk review, management, and action. This increase enables EPA to develop and review data critical to existing chemical risk evaluation and risk management activities; update and develop 21st century information technology and data tools to meet increasing demands; and begin to transform new chemicals review into an efficient and sustainable process to complete cases in keeping with the statutory requirements. This increase also will support an agencywide multi-year collaborative research program for new chemicals that is focused on modernizing the process and incorporating scientific advances in new chemical evaluations under TSCA.

Research: Air, Climate and Energy (S&T)

(FY 2023 ENA: \$100.4 M/264 FTE; FY 2024 PB: \$137.8 M/298.7 FTE; Change: +\$37.4 M/34.7 FTE)

This program supports climate research at EPA to accelerate solutions to tackle the climate crisis. This increase in resources and FTE will enhance EPA's efforts to combat the global issue of climate change and substantially advance research to assess the impacts of climate change on human health and ecosystems.

Homeland Security: Preparedness & Response (S&T and SF)

(FY 2023 ENA: \$60 M/124.1 FTE; FY 2024 PB: \$96 M/138.3 FTE; Change: +\$36 M/14.2 FTE)

This program carries out EPA's responsibility, under legislation and Presidential Directives, to remediate contaminated environments created by incidents such as terrorist attacks, industrial accidents, or natural disasters. The increased resources will support efforts to upgrade the Chemical Incident and Radiological Reconnaissance on Unmanned Systems (CIRRUS) to more effectively and efficiently support emergency response. This effort will assist in improving preparedness for communities with environmental justice concerns such as fenceline communities. This increase in resources and FTE also will expand EPA's capabilities to conduct research at its BSL-3 facility in Fort Meade, MD; to update the aging equipment that monitors the Nation's air for radiation; to modernize IT infrastructure for the Analytical Radiation Data System; and to support enhanced lab and field office facility operations and maintenance, including replacing the outdated PHILIS equipment. A portion of the funding will support research efforts to identify and address emerging threats to the water sector.

Reduce Risks from Indoor Air (EPM and S&T)

(FY 2023 ENA: \$13.9 M/39.2 FTE; FY 2024 PB: \$47.6 M/71.4 FTE; Change: +\$33.7 M/32.2 FTE)

This program works to reduce asthma disparities in low-income and/or communities of color in the U.S. by providing grants to nongovernmental organizations in public health/housing agencies to train and deploy community health workers who will deliver in-home asthma interventions and care. This increase in resources and FTE supports efforts to restore EPA's staff expertise, analysis, and capacity in the indoor air program. Funds also support efforts to address indoor air quality

Highlights of Major Program Changes

during wildfires, promote healthy school facilities in low-income communities in the U.S., and to address the international climate crisis by improving public health through the adoption of clean cookstoves.

Brownfields Projects (STAG)

(FY 2023 ENA: \$100 M; FY 2024 PB: \$131 M; Change: +\$31 M)

This program awards grants and provides financial and technical assistance to help tribes, states, local communities, and other stakeholders to work together to plan, inventory, assess, safely clean up, and reuse brownfields, particularly in underserved communities. A portion of this investment is designated for cooperative agreements targeted at communities affected by the retirement of coal-fired power plants. This program increase will build on current work to revitalize communities across the country by providing financial and technical assistance to assess, conduct cleanup, and plan reuse at brownfields sites.

Clean Air Allowance Trading Programs (EPM and S&T)

(FY 2023 ENA: \$23.7 M/ 66.7 FTE; FY 2024 PB: \$50.5 M/ 86.1 FTE; Change: +\$26.8 M/19.4 FTE)

This program is responsible for managing the Clean Air Status and Trends Network (CASTNET), an ambient monitoring network that has been continuously collecting data for more than 30 years. Increased resources will focus on technology updates such as replacing aging equipment, repairing monitoring shelters, deploying new equipment and sites in rural, often low-income/minority areas, and modernizing data reporting tools critical during emergencies and emerging needs. This investment also will support EPA's efforts to implement the American Innovation and Manufacturing (AIM) Act. A portion of this investment also will expand EPA's ability to perform advanced power sector analyses to tackle the climate crisis, including developing environmental justice tools to consider the distributional impacts of emissions on overburdened communities.

Pesticides: Protect Environment from Pesticides Risk (EPM and S&T)

(FY 2023 ENA: \$51 M/259.6 FTE; FY 2024 PB: \$77.7 M/282.1 FTE; Change: +\$26.7 M/22.5 FTE)

This program screens new pesticides before they reach the market and ensures that pesticides already in commerce are safe. EPA is legally responsible for registering and re-evaluating pesticides to protect humans, plants, animals, and ecosystems that are not targets of the pesticide. In addition, the Agency has responsibilities to ensure that pesticide regulatory decisions will not destroy or adversely modify designated critical habitat or result in jeopardy to the existence of endangered species. The increase in funding and FTE is to implement Endangered Species Act (ESA) considerations into pesticide regulatory decisions and develop regulatory processes, strategies, and approaches for EPA to come into fuller compliance with ESA.

Legal Advice: Environmental Program (EPM and SF)

(FY 2023 ENA: \$60.7 M/273.3 FTE; FY 2024 PB: \$85.7 M/343.5 FTE; Change: +\$25 M/70.2 FTE)

This program provides legal representational services, legal counseling, and legal support for all the Agency's environmental activities. It plays a central role in all statutory and regulatory interpretation of new and existing rules, rule development under EPA's environmental authorities, providing legal advice for every petition response and emergency response and defends actions in

Highlights of Major Program Changes

court, in coordination with the Department of Justice (DOJ). This increase in resources and FTE addresses a need for increased defensive litigation work in multiple environmental statutes, including legal work in pesticides and rulemakings for climate and clean air toxics. It also strengthens staffing and attorney training for those who provide legal advice and counsel in support of multiple environmental statutes and regulations to assist EPA in its ability to broaden and accelerate cleanup and management of PFAS contamination to protect human health and ecological systems.

Homeland Security: Critical Infrastructure Protection (EPM and S&T)

(FY 2023 ENA: \$11.8 M/26.6 FTE; FY 2024 PB: \$35.2 M/57.6 FTE; Change: +\$23.5 M/31 FTE)

This program supports the protection of critical water infrastructure, including providing water utilities of all sizes access to information, tools, training, and protocols designed to enhance the security (including cybersecurity), preparedness, and resiliency of the water sector. This increase of resources and FTE supports the Water Sector Cybersecurity Program to enhance cyber incident preparation, response, recovery, information sharing, and intelligence for water utilities to protect infrastructure. In addition, an increase of resources and FTE will help implement regulatory actions to mitigate the risks of cyberattacks in the water sector as well as increase the Agency's ability to respond to cyber incidents.

Audits, Evaluations, and Investigations (IG and SF IG Transfer)

(FY 2023 ENA: \$55.8 M/270 FTE; FY 2024 PB: \$78.4 M/333.5 FTE; Change: +\$22.5 M/63.5 FTE)

This program allows the Office of Inspector General (OIG) to conduct independent audits, evaluations, special reviews, and investigations of EPA, then identify risks and make recommendations to prevent fraud, waste, and abuse. This increase in resources and FTE will expand the oversight arm of audit, evaluations, investigation, and support offices within the OIG, to include administrative investigations into allegations of misconduct by senior agency employees and complaints of whistleblowers; data analytics and business intelligence tools to address high risk, high vulnerability areas of interest; creation of a standalone IT system; and audits, evaluations, and investigations of the Agency's spending under the Inflation Reduction Act.

Information Security (EPM and SF)

(FY 2023 ENA: \$10.2 M/14.1 FTE; FY 2024 PB: \$31.7 M/17.1 FTE; Change: +\$21.5 M/3 FTE)

The Information Security Program's mission is to protect the confidentiality, availability, and integrity of EPA's information assets. This increase supports enhancements to protect the Agency's information technology infrastructure and advance the implementation of EO 14028: *Improving the Nation's Cybersecurity*. This investment will increase EPA's information technology resiliency and limit vulnerabilities in the event of a malicious attack.

Human Resources Management (EPM, SF and WCF Reimbursable)

(FY 2023 ENA: \$58.7 M/254.4 FTE; FY 2024 PB: \$79.8 M/327.4 FTE; Change: +\$21.2 M/73 FTE)

This program supports human capital management (HCM) activities throughout EPA, including recruitment, hiring, employee development, performance management, leadership development, workforce planning, and labor union engagement. The increase of resources and FTE will support developing and implementing a new paid internship program to strengthen talent and workforce

Highlights of Major Program Changes

acquisition and focus on expanding federal work experience opportunities for underrepresented and underserved populations, support diversity, equity, and inclusion in the federal workforce, and increase support of the Foundations for Evidence-Based Policymaking Act. A portion of the increase will strengthen agencywide capacity to quickly increase staff levels in key offices and programs (i.e., environmental justice, climate, infrastructure programs, etc.).

Tribal – Capacity Building (EPM)

(FY 2023 ENA: \$14.7 M/78.6 FTE; FY 2024 PB: \$34.7 M/166.9 FTE; Change: +\$20 M/88.3 FTE)

EPA works with federally recognized tribes to implement federal environmental programs in Indian Country and strengthen human health and environmental protection in Indian Country. The increase in resources and FTE will support work to advance equitable implementation of EPA authorities and directives in Indian Country. This increase will enable EPA to work effectively with tribal governments and communities, administer tribal grants and critical technical assistance, and fulfill the federal trust responsibilities that align with the environmental statutes. Support will be provided to priority commitments made in EPA and Tribal Climate Adaptation Implementation Plans and allow incorporation of indigenous knowledge into climate change efforts.

International Sources of Pollution (EPM)

(FY 2023 ENA: \$7.3 M/33.4 FTE; FY 2024 PB: \$26 M/50.9 FTE; Change: +\$18.7 M/17.5 FTE)

The United States works with international partners to address global sources of pollution, including greenhouse gases, as well as the impacts of pollution from the United States on other countries and the global environment. This increase in resources and FTE will support efforts for climate change work, including GHG guidance, pilot programs, and indigenous engagements on climate change. It also will enhance capacity building governance programs for priority countries with increasing GHG footprints to increase their capacity to implement partnerships as well as legislative, regulatory, and legal enforcement.

Civil Rights Program (EPM)

(FY 2023 ENA: \$12.9 M/66.4 FTE; FY 2024 PB: \$31.5 M/ 143.6 FTE; Change: +\$18.6 M/77.2 FTE)

This program enforces federal civil rights laws that prohibit discrimination by recipients of federal financial assistance and protects employees and applicants for employment from discrimination. This program change increases staffing and capacity to enforce the Nation's external civil rights laws and to work toward the goal of achieving measurable environmental, public health, and quality of life improvements in the most overburdened, vulnerable, and underserved communities; supports activities including investigations into claims of discrimination by underserved communities and pre-award and post-award compliance activities.

Federal Stationary Source Regulations (EPM)

(FY 2023 ENA: \$30.3 M/124.5 FTE; FY 2024 PB: \$47.5 M/165.3 FTE; Change: +\$17.1 M/40.8 FTE)

The Clean Air Act (CAA) directs EPA to take actions to control air emissions of toxic, criteria, and other pollutants from stationary sources. This increase in funding and FTE will support the regulation of stationary sources of air pollution through developing and implementing emissions standards, regulations, and guidelines.

Highlights of Major Program Changes

Pollution Prevention Program (EPM)

(FY 2023 ENA: \$13 M/51.2 FTE; FY 2024 PB: \$29 M/69.2 FTE; Change: +\$16 M/18 FTE)

This program provides technical assistance and/or training to businesses and facilities to help them adopt and implement source reduction approaches, and to increase the development, adoption, and market penetration of greener products and sustainable manufacturing practices. This increased investment supports additional analyses, tool development, training, outreach, and partnerships to promote industrial awareness of P2 approaches and benefits as well as the widespread implementation to prevent or reduce pollution. Additional funding and FTE are provided to establish a new grant program supporting small businesses with transitioning to Toxic Substances Control Act (TSCA) compliant practices and with mitigation of economic impacts.

Public Engagement, Partnership, and Environmental Education (formerly Environmental Education, EPM)

(FY 2023 ENA: \$9.5 M/11.2 FTE; FY 2024 PB: \$24 M/24.2 FTE; Change: +\$14.5 M/13 FTE)

This program coordinates critical stakeholder outreach across all EPA's programs and environmental education, supporting the Agency's mission and Administration priorities. This program change is an increase to establish new programs and improve the Agency's public engagement, partnership, and outreach initiatives at the regional level and across the Agency.

Brownfields (EPM)

(FY 2023 ENA: \$26.2 M/ 129.5 FTE; FY 2024 PB: \$38.6 M/ 187.5 FTE; Change: +\$12.4 M/58 FTE)

This program supports the revitalization of Brownfields sites by awarding grants and providing technical assistance to tribes, states, local communities, and other stakeholders to work together to plan, inventory, assess, safely clean up, and reuse brownfields. The increased funding will support EPA's Community Development Specialists in their efforts to manage land revitalization projects, provide one-on-one financial planning support, and educate tribal, rural, and EJ communities on how to address brownfields. This increase in resources and FTE will provide expanded technical assistance and build capacity in small, rural, EJ, and other historically underserved communities.

Superfund: Federal Facilities (SF)

(FY 2023 ENA: \$26.2 M/113.2 FTE; FY 2024 PB: \$37.4 M/112.7 FTE; Change: +\$11.2 M/-0.5 FTE)

This program oversees and provides technical assistance for the cleanup and reuse of Federal Facility National Priorities List (NPL) sites. This program supports oversight functions related to the work of the Department of Defense (DoD), the Department of Energy, and other federal agencies that have released PFAS (Per- and Polyfluoroalkyl Substances) into the environment. This increase will help address critical gaps in EPA's ability to oversee DoD PFAS cleanup and to restore core program capacity, including keeping pace with the Agency's oversight role at Federal Facilities NPL sites.

Stratospheric Ozone: Multilateral Fund (EPM)

(FY 2023 ENA: \$9.2 M; FY 2024 PB: \$18 M; Change: +\$8.8 M)

The *Multilateral Fund for the Implementation of the Montreal Protocol* (Multilateral Fund) was created by the Parties to the Montreal Protocol to provide funds to enable developing countries to

Highlights of Major Program Changes

comply with their Montreal Protocol obligations to phase out ozone-depleting substances (ODS) and phase down hydrofluorocarbons (HFCs). This increase will help fund additional activities associated with the adoption of the Kigali Amendment and developing country phase down of HFCs while continuing to support ODS phaseout activities.

State and Local Prevention and Preparedness (EPM)

(FY 2023 ENA: \$15.4 M/67.1 FTE; FY 2024 PB: \$23.8 M/93.1 FTE; Change: +\$8.4 M/26 FTE)

This program establishes a structure for federal, tribal, state, and local partners to work together with industry to protect emergency responders, local communities, facility workers, the environment, and property from chemical accident risks through accident prevention and emergency response programs, community and facility engagement, and improved safety systems. This increase in resources and FTE supports a multi-pronged approach to protect fence-line communities at risk from nearby chemical facilities, including providing increased outreach and inspections at regulated facilities to ensure facilities have measures in place to prevent chemical accidents.

Categorical Grant: Lead (STAG)

(FY 2023 ENA: \$16.3 M; FY 2024 PB: \$24.6 M; Change: +\$8.3 M)

This program provides support to authorized tribal and state programs that administer training and certification programs for lead professionals and renovation contractors engaged in lead-based paint abatement and renovation, repair and painting activities, as well as accreditation of training providers. This funding will increase support for EPA's tribal and state partners to run programs that develop and implement authorized lead-based paint abatement programs, authorize Renovation, Repair, and Painting programs, and lead-poisoning programs.

LUST/UST (EPM and LUST)

(FY 2023 ENA: \$22 M/97.9 FTE; FY 2024 PB: \$29.1 M/108.6 FTE; Change: +\$7.1 M/10.7 FTE)

This program's work helps prevent releases of petroleum through activities such as inspection and compliance assistance support. It provides states and tribes with technical assistance and guidance and directly funds projects that assist states and tribes in their program implementation. EPA is the primary implementer of the UST Program in Indian Country. The increase in resources and FTE is requested to conduct direct E15 compliance inspections in Indian Country; to develop outreach materials and coordinate with the regulated community; as well as to support an additional 11 Superfund cleanups and five potentially responsible party-led cleanups in Indian Country.

Categorical Grant: Tribal Air Quality Management (STAG)

(FY 2023 ENA: \$16.4 M; FY 2024 PB: \$23.1 M; Change: + \$6.7 M)

This resource increase will help expand the efforts of tribes and tribal air quality control agencies to implement their programs and to accelerate immediate on-the-ground efforts to reduce greenhouse gases. The increase supports additional air quality monitoring capacity on tribal lands.

Highlights of Major Program Changes

Programs with Decreases (in Ascending Order)

Superfund: Remedial (SF and Superfund Tax)

(FY 2023 ENA: \$618.7M/890.8 FTE; FY 2024 PB: \$0 M/874.8 FTE; Change: -\$618.7 M/-16.0 FTE)

This program works to clean up and remove National Priority List (NPL) sites through remedial construction projects. Funds are prioritized for NPL sites that present the highest risk to human health and the environment. In FY 2024, the Superfund Remedial Program is proposed to be transitioned from the annual Superfund appropriated resources to Superfund tax receipts. 874.8 FTE will be funded by the tax receipts as reimbursable FTE. The U.S. Treasury forecasts collecting a total of \$2.54 billion in Superfund taxes which will be available for use in FY 2024. As a result, the pace of work is not expected to be negatively impacted since both program and FTE costs could be supported by Superfund tax receipts and the increased revenue to the government.

Superfund: Emergency Response Removal (SF and Superfund Tax)

(FY 2023 ENA: \$195 M/247.7 FTE; FY 2024 PB: \$0 M/250.7 FTE; Change: -\$195 M/+3 FTE)

This program is the primary institution of federal emergency responses to releases of hazardous substances, pollutants, or contaminants. EPA's 24-hour-a-day response capability is a critical component of the National Contingency Plan. Superfund Removal cleanups vary in complexity and contain a wide variety of contaminants including lead, mercury, and asbestos. In FY 2024, the Agency proposes to transition the Superfund Removal Program from the annual Superfund appropriation to Superfund tax receipts. 250.7 FTE will be funded by the tax receipts as reimbursable FTE. The pace of work is not expected to be negatively impacted since both response work and FTE costs will be supported by Superfund tax receipts.

Superfund: Enforcement (SF and Superfund Tax)

(FY 2023 ENA: \$171.3 M/771.3 FTE; FY 2024 PB: \$0 M/771.8 FTE; Change: -\$171.3 M/0.5 FTE)

This program protects communities by ensuring prompt site cleanup by maximizing the participation of potentially responsible parties in performing and paying for cleanups or using program resources if there are no liable parties. In FY 2024, the Agency proposes to transition the Superfund Enforcement Program from the annual Superfund appropriation to Superfund tax receipts. The U.S. Treasury forecasts collecting a total of \$2.54 billion in Superfund taxes which will be available for use in FY 2024. 771.8 FTE will be funded by the tax receipts as reimbursable FTE. These additional government revenues will allow the Agency to advance work to enforce cleanup actions in FY 2024.

Technical Assistance for Wastewater Treatment Work (STAG)

(FY 2023 ENA: \$27 M; FY 2024 PB: \$18 M; Change: -\$9 M)

This program provides grants to nonprofit organizations to help rural, small, and tribal municipalities to obtain Clean Water State Revolving Fund (CWSRF) financing, protect water quality and ensure Clean Water Act (CWA) compliance, and share information on planning, design, construction, and operation of wastewater systems. Other EPA grant programs and sources provide similar funding opportunities.

List of Acronyms

***U.S Environmental Protection Agency
List of Acronyms***

ASPECT	Airborne Spectral Photometric Environmental Collection Technology
AIM	American Innovation and Manufacturing
ARP	American Rescue Plan
AWIA	America's Water Infrastructure Act
B&F	Building and Facilities
CAA	Clean Air Act
CAS	Cross Agency Strategy
CBI	Confidential Business Information
CBRN	Chemical, Biological, Radiological, and Nuclear
CCR	Coal Combustion Residue
CDR	Chemical Data Reporting Rule
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CIRRUS	Chemical Incident and Radiological Reconnaissance on Unmanned Systems
CPA	Certification of Pesticide Applicators
CSAPR	Cross-State Air Pollution Rules
CWA	Clean Water Act
CROMERR	Cross-Media Electronic Reporting Rule
CWNS	Clean Watershed Needs Surveys
CWSRF	Clean Water State Revolving Fund
DEIA	Diversity, Equity, Inclusion, and Accessibility
DERA	Diesel Emissions Reduction Act
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
DWINSA	Drinking Water Infrastructure Needs Survey and Assessment
DWSRF	Drinking Water State Revolving Fund
DWWIA	Drinking Water and Wastewater Infrastructure Act
EN	Environmental Information Exchange Network
EJ	Environmental Justice
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
EPCRA	Emergency Planning and Community Right-to-Know Act
EPM	Environmental Programs and Management
ESA	Endangered Species Act
ETEP	EPA-Tribal Environmental Plans
FFDCA	Federal Food, Drug, and Cosmetic Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GAP	General Assistance Program
GHG	Greenhouse Gas
GPRA	Government Performance and Results Act
GSA	General Services Administration
HFCs	Hydrofluorocarbons

List of Acronyms

HPS	High Priority Substance
HUBZones	Historically Underutilized Business Zones
IAG	Interagency Agreements
ICIS	Integrated Compliance Information System
IJA	Infrastructure Investment and Jobs Act
IPM	Integrated Pest Management
IRA	Inflation Reduction Act
IT	Information Technology
JETP	Just Energy Transition Partnerships
LCRI	Lead and Copper Rule Improvements
LCRR	Lead and Copper Rule Revisions
LUST	Leaking Underground Storage Tanks
MMTCO _{2e}	Million Metrics Tons of Carbon Dioxide Equivalent
MPRSA	Marine Protection, Research and Sanctuaries Act
MY	Model Year
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NEPPS	National Environmental Performance Partnership System
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
NPS	Nonpoint Source
NVFEL	National Vehicle and Fuel Emissions Laboratory
OA	Office of the Administrator
OCFO	Office of the Chief Financial Officer
OEJECR	Office of Environmental Justice and External Civil Rights
OGC	Office of General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OMS	Office of Mission Support
ORD	Office of Research and Development
P2	Pollution Prevention
PB	President's Budget
PCB	Polychlorinated Biphenyls
PFAS	Per- and Polyfluoroalkyl Substances
PGII	Partnership for Global Infrastructure and Investment
PHILIS	Portable High-Throughput Integrated Laboratory Identification System
PIRT	Pesticide Inspector Residential Program
PM	Particulate Matter
PPG	Performance Partnership Grants
PREP	Pesticide Regulatory Education Program
PRIA	Pesticide Registration Improvement Extension Act
PRP	Potentially Responsible Party
PWSS	Public Water System Supervision
QR	Quick Response code
RAU	Ready for Anticipated Use
RCRA	Resource Conservation and Recovery Act
REO	Recycling Education and Outreach
RMP	Risk Management Plan
RRP	Renovation, Repair, and Painting
SC	Safer Choice

List of Acronyms

SDWA	Safe Drinking Water Act
SDWIS	Safe Drinking Water Information System
SES	Senior Executive Service
SF	Superfund
SNEE	Southern New England Estuary
SIP	State Implementation Plans
SIRG	State Indoor Air Radon Grant
SRF	State Revolving Fund
STAG	State and Tribal Assistance Grants
SWIFR	Solid Waste Infrastructure for Recycling
TMDL	Total Maximum Daily Loads
TRI	Toxics Release Inventory
TSCA	Toxic Substances Control Act
UCMR	Unregulated Contaminant Monitoring Rule
UIC	Underground Injection Control
UST	Underground Storage Tanks
UV	Ultraviolet
VOC	Volatile Organic Compounds
WIFIA	Water Infrastructure Finance and Innovation Act
WIIN	Water Infrastructure Improvements for the Nation Act
WQS	Water Quality Standards
WPS	Agricultural Worker Protection Standard



United States Environmental Protection Agency
www.epa.gov

Exhibit 54



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

June 22, 2022

In Reply Refer to:

EPA Complaint No. 01RNO-20-R7

Dru Buntin, Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102
Dru.Buntin@dnr.mo.gov

Re: Voluntary Compliance Agreement to Resolve Partial Preliminary Findings of Non-Compliance

Dear Director Buntin:

Enclosed, please find a Voluntary Compliance Agreement (VCA) entered into by the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) and the Missouri Department of Natural Resources (MoDNR). This VCA resolves the Partial Preliminary Findings of Non-Compliance issued on March 30, 2021, for EPA Complaint No. 01RNO-20-R7.

On September 29, 2020, EPA accepted for investigation a complaint filed on September 4, 2020, by the Great Rivers Environmental Law Center on behalf of the National Association for the Advancement of Colored People (NAACP), Missouri State Conference, the NAACP St. Louis City Branch, and the Dutchtown South Community Corporation, against MoDNR alleging discrimination on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulations, at 40 C.F.R. Part 7. Specifically, EPA accepted for investigation:

1. Whether MoDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown" located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations; and

Director Dru Buntin

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2. Whether MoDNR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the MoDNR's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the MoDNR has a public participation policy and process that is consistent with Title VI and other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The enclosed VCA is entered into, pursuant to the authority granted to EPA under the federal nondiscrimination laws, including 40 C.F.R. Parts 5 and 7, and resolves the second issue identified above.¹ On November 22, 2021, ECRCO and MoDNR agreed to engage in the Informal Resolution Agreement (IRA) process to resolve the first issue identified above. That process is currently pending and ECRCO looks forward to reaching an IRA with MoDNR as soon as possible.

The enclosed VCA does not affect MoDNR's continuing responsibility under Title VI, 40 C.F.R. Parts 5 and 7, and other federal nondiscrimination laws, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints, nor does it address any other matter not covered by this VCA. This letter/VCA is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such. EPA is committed to working with MoDNR as it implements the provisions of the VCA. If you have any questions regarding this letter and enclosed VCA, please contact me at (202)564-9649 or by e-mail at dorka.lilian@epa.gov.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Jacob Westen
General Counsel
Missouri Department of Natural Resources

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights & Finance Law Office

¹ ECRCO did not make a preliminary finding related to whether MoDNR has in place a public participation policy and process that is consistent with Title VI and other federal civil rights laws, based on the limited information provided by MoDNR, except as to the failure to provide language access to individuals with LEP.

Director Dru Buntin

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Edward H. Chu
Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 7

Leslie Humphrey
Regional Counsel
EPA Region 7

VOLUNTARY COMPLIANCE AGREEMENT
between the
MISSOURI DEPARTMENT OF NATURAL RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint No. 01RNO-20-R7

I. PURPOSE AND JURISDICTION

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and other federal nondiscrimination laws, and United States Environmental Protection Agency's (EPA) implementing regulations at 40 C.F.R. Parts 5 and 7, prohibit discrimination on the basis of race, color, national origin, disability, sex and age in the programs or activities of applicants for or recipients of federal financial assistance.¹
- B. The External Civil Rights Compliance Office (ECRCO) is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin [including limited-English proficiency (LEP)], disability, sex, and age in programs or activities that receive federal financial assistance from the EPA.
- C. The EPA published *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (Guidance).² This Guidance provides a general framework that recipients of EPA financial assistance may use to provide meaningful access to limited English proficient persons.
- D. The Missouri Department of Natural Resources (MoDNR) receives financial assistance from EPA and, therefore, must ensure nondiscrimination in programs and activities pursuant to the provisions of Title VI, and other federal nondiscrimination laws, and EPA's implementing regulations.
- E. This Voluntary Compliance Agreement (VCA or Agreement) is entered into by MoDNR and EPA.
- F. This Agreement is entered into pursuant to the authority granted to EPA under the federal nondiscrimination laws, including 40 C.F.R. Parts 5 and 7, and resolves Issue #2 of EPA Complaint No. 01RNO-20-R7.

¹ Title VI of the Civil Rights Act of 1964, 42 United U.S.C. §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5.

² 69 FR 35602 (June 25, 2004). See https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf.

- G. This Agreement sets forth the specific steps that MoDNR has agreed to take to come into voluntary compliance in response to EPA's March 30, 2021, preliminary findings, herein incorporated by reference.

II. Background

- A. On September 4, 2020, the Great Rivers Environmental Law Center on behalf of the National Association for the Advancement of Colored People, Missouri State Conference ("Missouri NAACP"), the NAACP St. Louis City Branch ("St. Louis City NAACP"), and the Dutchtown South Community Corporation (DSCC)³ filed a complaint with EPA alleging that the MoDNR discriminated against minority communities on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.
- B. On September 29, 2020, ECRCO determined that the Complaint met the jurisdictional requirements and identified the following issues for investigation:
1. Whether MoDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown," located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations;⁴ and
 2. Whether MoDNR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to MoDNR's services, programs, and activities for individuals with LEP and individuals with disabilities, and whether the MoDNR has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.⁵

³ The complaint identifies that the DSCC representing the communities of Dutchtown, Mt. Pleasant, Marine Villa and Gravois Park located in South St. Louis City, MO and is collectively hereinafter referred to as Dutchtown.

⁴ Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) et seq. (prohibiting discrimination on the basis of race, color or national origin); 40 C.F.R. Parts 5 and 7. See also U.S. EPA, Chapter 1 of the U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit: Chapter 1, transmittal letter, and FAQs (https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf). (2017).

⁵ See Title VI, 42 U.S.C. 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March

- C. On March 30, 2021, ECRCO issued “Partial Preliminary Findings for EPA Complaint No. 01RNO-20-R7: Non-Compliance” that addressed the second issue identified above (implementation of the procedural safeguards as required under 40 C.F.R. Parts 5 and 7).⁶ With respect to the first issue, on November 22, 2021, ECRCO and MoDNR agreed to engage into an informal resolution process to resolve the first issue.
- D. Since the issuance of ECRCO’s March 30, 2021, letter, ECRCO and MoDNR have continued to engage in conversation regarding voluntary compliance. MoDNR has agreed to enter into this VCA and the commitments in Section III to demonstrate voluntary compliance.

III. **Voluntary Compliance Commitments** MoDNR commits to take the following specific actions to come into voluntary compliance:

- A. MoDNR will ensure that the link on its Homepage titled “ADA and Non-Discrimination,” which is a link to its Notice of Nondiscrimination, is “prominently” posted and that the Notice of Non-Discrimination is meaningfully accessible to persons with limited English proficiency. Specifically, within 45 days of the effective date of this Agreement, MoDNR will translate and post this link on its main Homepage in Spanish, Chinese, Croatian, and Vietnamese -- the appropriate languages other than English, as identified by MoDNR. Additionally, MoDNR will include the hyperlink to the nondiscrimination statement when disseminating news releases, proposed rules or rulemaking activities, solicitations, public meeting announcements, and other public advisory announcements.
- B. MoDNR will ensure that the non-discrimination grievance policies and procedures and complaint form are meaningfully accessible to persons with limited-English proficiency. Within 45 days of the effective date of this agreement, MoDNR will translate and post on its website the documents associated with links below in Spanish, Chinese, Croatian, and Vietnamese -- the appropriate languages other than English, as identified by MoDNR:
- External Complaint Response Policy;
 - External Complaint of Discrimination Form MO 780-2926;
 - Notice Regarding the Americans with Disabilities Act; and Grievance Procedure Under the Americans with Disabilities Act.

21, 2006) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, (https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf); U.S. EPA, Disability Nondiscrimination Plan Sample (https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

⁶ ECRCO did not make a preliminary finding related to whether MoDNR has in place a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, based on the limited information provided by MoDNR, except as to the failure to provide language access to individuals with LEP.

C. MoDNR will develop and post on its Website a Plan/Procedures to Ensure Meaningful Access to its Programs and Activities for Persons with Limited English Proficiency (LEP). At a minimum, the Plan/Procedures will address the following.

1. MoDNR will conduct an appropriate “Four-Factor” analysis as described in EPA’s LEP Guidance⁷ to identify the appropriate language groups in the State of Missouri that may need language services and determine what language services or mix of language services the MoDNR needs to provide (e.g., qualified interpreters and translators), to ensure that individuals with limited-English proficiency can meaningfully participate in the MoDNR’s programs and activities.
 - a. Factor 1: Number and Proportion of persons with LEP encountered by MoDNR programs and activities. Within 15 days of the effective date of this Agreement, MoDNR will confirm that it has conducted this analysis (currently, MoDNR states that the appropriate “prominent” languages in the State of Missouri are: Spanish, Chinese, Croatian, and Vietnamese.)
 - b. Factor 2: Frequency with which individuals with LEP come into contact with MoDNR programs and activities.
 - c. Factor 3: Nature and Importance of the MoDNR program or activity.
 - d. Factor 4: Resources and costs.
2. Within 45 days of the effective date of this Agreement, MoDNR will complete its analysis of Factors 2-4 above and this analysis will be reflected in its draft LEP Plan/Procedures. In light of MoDNR’s analysis of all four factors, MoDNR will in its draft Plan/Procedures specifically address how it will address the following to ensure meaningful access:
 - a. Advertisement of language access services. MoDNR will inform the public that language access is available, at no cost, to all of its programs, activities, and services.
 - b. Evaluation of distinct communities. MoDNR will identify a process for consulting additional resources and information in addition to census data to refine the identification of distinct communities with existing language barriers. These resources may include local school data, and Missouri Association of Counties and Missouri Municipal League information.

⁷ 69 FR 35602 (June 25, 2004). (See https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf or <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi> <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>).

- c. Vital document translation criteria of general interest. MoDNR will develop criteria for classifying and/or defining “vital documents” to be translated into the prominent languages for individuals with LEP who are served by or likely to be encountered by the MoDNR’s programs and activities, including documents such as, but not limited to: public notices regarding environmental concerns; public health and/or environmental notices and violations; forms/processes/documents used for reporting environmental concerns; forms /process/documents for reporting civil rights (discrimination) concerns, and documents of importance to specific individuals, such as specific notices, findings and processes of individual importance;⁸
- d. Translation of vital documents. MoDNR will identify all “vital documents” to be translated that could be of individual interest to a particular individual with LEP or group individuals with LEP (e.g., an individual with LEP wishing to file a grievance or complaint), and explain how it will provide meaningful access to such documents to any persons with limited English proficiency, regardless of the language other than English spoken);
- e. Translation of documents not affirmatively translated. MoDNR will develop and provide a process to request the translation of additional documents into other languages.
- f. Provision for simultaneous oral interpretation by qualified interpreters of live proceedings in person or through the use of virtual platforms. MoDNR will explain how it will provide oral interpretation services to provide meaningful access to its programs and activities (e.g., town hall meetings and public hearings, etc.) in prominent and other requested languages, and the ability for individuals with LEP to participate in those proceedings to the same extent as persons with English proficiency can participate (e.g. accommodate LEP individuals wishing to provide comments during meetings, hearings, proceedings, programs, and activities hosted by MoDNR);
- g. Utilization of MoDNR’s social media platforms to provide translated vital information and increase messaging to LEP populations;
- h. MoDNR will develop a “notice” that it will place prominently on its website homepage as well as on all vital documents, that language assistance services for persons with limited English proficiency will be provided by MoDNR free of charge;

⁸ 69 FR 35602 (June 25, 2004). “Whether or not a document (or the information it disseminates or solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”

- i. MoDNR will consider hiring and appointing staff with bilingual capabilities to better serve the public; and,
 - j. MoDNR will identify how it intends to provide qualified translation and interpretation services (that is, through what method, such as, by hiring qualified bilingual employees, contracting, etc.) to ensure meaningful access to its programs and activities for persons with limited English proficiency.
- 3. Within 90 days of the effective date of this Agreement, MoDNR will post a draft of the Language Access Plan/Procedures (LAPP) for a 30-day public comment period, for the public and stakeholders to provide comments and suggestions. MoDNR will ensure that the draft Plan/Procedures is accessible to Persons with limited English proficiency and that the notice requesting public comment is also translated into the appropriate non-English languages and provides a contact person(s) the public may reach if they have questions.
- 4. Within 30 days following the end of the LAPP 30-day public comment period, MoDNR will submit a final draft the LAPP, incorporating, as appropriate, any changes in response to public comment and a summary of the public comments received, to ECRCO. ECRCO will review the final draft LAPP and provide comments to MoDNR within 30 days of its receipt of the final draft LAPP. Within 120 days of receiving ECRCO's comments and plan approval, MoDNR will incorporate changes based upon ECRCO's comments and prominently publish in print and on its website the final LAPP in English and translated in the prominent LEP languages identified within the LAPP.
- 5. If at any time during the course of this Agreement MoDNR reasonably and in good faith believes it may be unable to meet a deadline established in this Agreement, MoDNR may request and ECRCO in its discretion may authorize a reasonable deadline extension. All such deadline extensions may be requested and approved or denied via electronic mail correspondence separate from a modification process contemplated by Section IV.C, below.

IV. EFFECT OF THE AGREEMENT

- A. The MoDNR understands that, if necessary, ECRCO may visit the MoDNR, interview staff, and request such additional reports or data as are necessary for ECRCO to determine whether the MoDNR has fulfilled the terms of this Agreement.
- B. The MoDNR understands that the EPA will not close its monitoring of this Agreement until ECRCO determines that the MoDNR has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA issuance of a final finding of a violation and initiation of enforcement action. Once MoDNR fulfills all

Voluntary Compliance Agreement - 01RNO-20-R7

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of the commitments in Section III, ECRCO will issue MoDNR a Monitoring Closure Letter resolving in full the issues addressed in this Agreement.

- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the MoDNR's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Director of the MoDNR and the Director of ECRCO.
- D. This Agreement constitutes the entire Agreement between the MoDNR and the EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by the MoDNR and the EPA in accordance with the provisions of Section III.C. above.
- E. The Agreement does not resolve the additional issues raised in EPA Complaint No. 01RNO-20-R7.
- F. This Agreement does not affect the MoDNR's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect the EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- G. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Director, in their capacity as an official of the MoDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Missouri Department of Natural Resources:



Dru Buntin, Director

6/8/2022

(Date)

On behalf of the External Civil Rights Compliance Office, Office of General Counsel, U.S. Environmental Protection Agency:



Lilian S. Dorka, Director

6-3-2022

(Date)

Exhibit 55



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

August 10, 2023

In Reply Refer to:

EPA Complaint No: 01RNO-22-R5

Phil Roos, Director
Michigan Department of Environment, Great Lakes, and Energy
525 West Allegan Street
Post Office Box 30471
Lansing, MI 48909-7973
RoosP@michigan.gov

Re: Resolution of EPA Complaint No. 01RNO-22-R5

Dear Director Roos:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights (OEJECR), Office of External Civil Rights Compliance (OECRC), has resolved EPA Complaint No. 01RNO-22-R5 based on the enclosed Informal Resolution Agreement (Agreement), which is entered into between EPA and the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

On March 11, 2022, EPA accepted for investigation a complaint against EGLE alleging discrimination on the basis of race, national origin, disability, and age in violation of Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, EPA accepted the following issues for investigation:

1. Whether EGLE discriminated on the basis of race, color, and national origin in violation of Title VI and the EPA's implementing regulation at 40 C.F.R. Part 7, when it approved Permit to Install (PTI) Application No. 2021-0019 for the Ajax Asphalt Plant;
2. Whether EGLE discriminated on the basis of race, color, or national origin, disability, and age in violation of Title VI, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 and the EPA's implementing regulation at 40 C.F.R. Part 7, by failing to provide meaningful public participation in connection with the approval of the application for PTI Application No. 2021-0019 for the Ajax Asphalt Plant; and
3. Whether EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228, has the intent and/or effect of

Phil Roos, Director

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subjecting persons to discrimination on the basis of race, color, and national origin in violation of Title VI and the EPA's implementing regulation at 40 C.F.R. Part 7.

During the course of EPA's investigation, EGLE agreed to enter into the IRA process in order to resolve EPA Complaint No. 01RNO-22-R5. The enclosed Agreement, signed on August 10, 2023, is entered into by EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI and 40 C.F.R. Part 7. It is understood that the Agreement does not constitute an admission by EGLE of any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation.

EPA Region 5's work with Michigan EGLE to protect communities, human health, and the environment continues outside of the Agreement. The agencies jointly continue to expand our understanding of new science and tools and to minimize or avoid the adverse impacts of pollution. EPA Region 5 will continue its cross-program work to advance environmental justice and equity in Flint, Michigan.

EPA continues to take seriously its oversight role when, for example, reviewing draft environmental permits. Recent Region 5 Air and Radiation Division (ARD) work to address air quality concerns in Flint includes mobile monitoring, working with educators to build and install indoor air filters in schools; and hosting an all-day Clean Air Act workshop to help interested community members learn more about available tools for addressing air pollution. ARD will conduct additional air monitoring in Flint in the fall of 2023 and commits to discussing the results with stakeholders as soon as they are available.

Region 5's Enforcement and Compliance Assurance Division (ECAD) continues to inspect facilities to ensure compliance and takes enforcement actions as appropriate. Region 5 encourages the community to raise concerns to the Region and to use the Agency's Report-A-Violation system ([Report Environmental Violations | ECHO | US EPA](#)) when a suspected violation has occurred. Relatedly, we appreciate the recent request from Complainants' Representatives to meet with Region 5 to share initial findings from their facility review activities, and look forward to scheduling a meeting with them soon.

Region 5 will continue working with Michigan EGLE on the implementation of the Resource Conservation and Recovery Act (RCRA) Subtitle C Hazardous Waste Permitting and Corrective Action requirements and RCRA Subtitle D Coal Combustion Residuals requirements, and to facilitate Brownfield redevelopment in the state of Michigan. Region 5 will also continue to work with Flint community leaders, the City of Flint, EGLE, and Michigan Department of Health and Human Services to address questions and concerns about drinking water.

Finally, EPA Region 5 and OEJECD also welcome the opportunity to participate with EGLE in community-driven assessment and action to address cumulative impacts in Flint, whether through the PACE EH or another approach with similar goals. As stated in EPA's April 2022 Equity Action Plan, "developing a clear and consistent ability to apply cumulative impacts [analysis] throughout the environmental and public health regulatory endeavor is a necessary precondition for fully achieving EPA's mission to protect the human health and the environment,

Phil Roos, Director

Page 3

including all communities and individuals at all life stages.”¹ Our ongoing work in Flint can demonstrate what this looks like in practice.

The enclosed Agreement does not affect EGLE’s continuing responsibility under Title VI, 40 C.F.R. Parts 5 and 7, and other federal nondiscrimination laws, nor does it affect OECRC’s investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth EPA’s disposition of the complaint. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

EPA is committed to working with EGLE as it implements the provisions of the Agreement. If you have any questions regarding this letter and the Agreement between EPA and EGLE, please contact me at (202) 809-3297 or by e-mail at hoang.anhthu@epa.gov.

Sincerely,

ANHTHU
HOANG

Digitally signed by
ANHTHU HOANG
Date: 2023.08.09
18:31:57 -04'00'

Anhthu Hoang, Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice and
External Civil Rights

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 5

Robert Kaplan
Regional Counsel
U.S. EPA Region 5

James Clift
Deputy Director
Michigan Department of Environment, Great Lakes, and Energy

¹ See EPA’s EO 13985 Equity Action Plan at: https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

Office of Environmental Justice and External Civil Rights

Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT

between

**MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES,
AND ENERGY (EGLE)**

and

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)
EPA COMPLAINT NO. 01RNO-22-R5**

I. PURPOSE AND JURISDICTION

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (“Title VI”) and other federal nondiscrimination laws, and the United States Environmental Protection Agency’s (“EPA”) implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and retaliation in the programs, services, and activities of applicants for or recipients of federal financial assistance.¹
- B. The Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) receives federal financial assistance from the EPA. As a term of receiving that assistance, EGLE agreed to comply with federal nondiscrimination laws, including Title VI, and all applicable civil rights regulations.² EGLE also provided assurance that it would “fully comply with all applicable civil rights statutes and EPA regulations.”³ Therefore, EGLE must ensure nondiscrimination in programs and activities pursuant to the provisions of Title VI, the other federal non-discrimination laws, and the EPA’s implementing regulation.
- C. On November 8, 2021, the EPA’s Office of External Civil Rights Compliance (“OECRC”) received Complaint No. 01RNO-22-R5 (“Complaint”), which alleged discrimination by EGLE on the basis of race and national origin⁴ in violation of Title

¹ Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

² See Term and Condition 36, Civil Rights Obligations at https://www.epa.gov/sites/production/files/2019-09/documents/fy_2020_epa_general_terms_and_conditions_effective_october_1_2019.pdf.

³ See Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance.

⁴ While EPA Complaint No. 01RNO-22-R5 alleged discrimination on the basis of race and national origin, OECRC included discrimination on the basis of disability and age in violation of Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 to Issue #2, based on the nature of the allegations.

VI of the Civil Rights Act.

D. On March 11, 2022, the EPA accepted for investigation the following issues.

1. **ISSUE 1:** Whether EGLE discriminated on the basis of race, color, and national origin in violation of Title VI and the EPA's implementing regulation at 40 C.F.R. Part 7, when it approved Permit to Install ("PTI") Application No. 2021-0019 for the Ajax Asphalt Plant;
2. **ISSUE 2:** Whether EGLE discriminated on the basis of race, color, or national origin, disability, and age in violation of Title VI, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 and the EPA's implementing regulation at 40 C.F.R. Part 7, by failing to provide meaningful public participation in connection with the approval of the application for PTI Application No. 2021-0019 for the Ajax Asphalt Plant; and
3. **ISSUE 3:** Whether EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228, has the intent and/or effect of subjecting persons to discrimination on the basis of race, color, and national origin in violation of Title VI and the EPA's implementing regulation at 40 C.F.R. Part 7.

E. During the course of the EPA's investigation of the Complaint, on April 8, 2022, EGLE agreed to engage in the voluntary Informal Resolution Agreement ("Agreement") process in order to resolve the Complaint.

F. This Agreement does not constitute an admission by EGLE of a violation of, or a finding of compliance or noncompliance by the EPA with, Title VI or 40 C.F.R. Parts 5 and 7. The acceptance of a complaint for investigation is not a decision on the merits.

G. EGLE is in no way compelled to enter this Agreement but does so voluntarily.

H. This Agreement is entered into by EGLE and the EPA. This Agreement serves to resolve the issues accepted for investigation in this Complaint. As such, subject to EGLE's good faith implementation of this Agreement, the EPA is closing its investigation of this Complaint and will not issue preliminary findings.

I. This Agreement is entered into pursuant to the authority granted to the EPA under the federal non-discrimination laws, including Title VI, and the EPA's implementing regulation found at 40 C.F.R. Part 7, and resolves the Complaint.

J. EGLE is committed to continue to carry out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and other federal non-

discrimination laws and the EPA regulations at 40 C.F.R. Parts 5 and 7. The activities detailed in Section III of this Agreement, which EGLE has voluntarily agreed to undertake and implement, are in furtherance of this ongoing commitment.

II. BACKGROUND

- A. On July 1, 2021, EGLE published for public comment the draft Permit to Install (“PTI” or “air permit”) for Ajax Materials Corporation’s proposed asphalt plant (“Ajax”) to be located at 5088 Energy Drive in Genesee Township, Michigan.
- B. During the public comment period, EGLE received comments raising civil rights concerns related to the issuance of a permit for Ajax.
- C. By letter dated September 16, 2021, EPA Region 5 notified EGLE, in part, of concerns raised by members of the public regarding the siting of Ajax.
- D. On November 15, 2021, EGLE responded to the EPA letter of September 16, 2021, requesting: 1) that “[i]f the EPA believes that the permit does not fully comply with all requirements established in federal law, ... that the EPA meet with the permittee and with EGLE to identify any specific change that should be made to the permit...;” 2) for EPA to “provide technical expertise to design,” create, and operate a comprehensive air toxics monitoring network within overburdened communities; and 3) for EPA to provide further “guidance ... addressing environmental justice considerations in permitting and enforcement procedures.”
- E. On November 15, 2021, EGLE issued a minor source air permit under the Clean Air Act, 42 U.S.C. §7401 *et seq.*, to Ajax for the construction of a new hot-mix asphalt plant to be located in Genesee Township, Michigan, on the border of the City of Flint.
- F. On March 23, 2022, the EPA responded to EGLE’s letter of November 15, 2021. The EPA noted that, as co-regulators, the EPA and EGLE would together begin the critically important work of addressing the disproportionate burden of environmental pollution and negative health impacts experienced by communities of color and low-income communities. Additionally, the EPA identified funding opportunities recently provided under the American Rescue Plan to help states, tribes, and local communities better understand local air quality issues.
- G. Ajax’s location is near residential housing and community gathering centers located within Genesee Township. According to EPA’s EJScreen screening and mapping tool (“EJScreen”), as of December 2022, nearly 3,000 people live within a one-mile radius of the location of Ajax. According to EJScreen, among that population, 77% identify as Black or African American and 10% of the population identify as Hispanic.
- H. For the purposes of this Agreement, “Complainants” is defined as the groups that filed the Complaint with OECRC on November 8, 2021. “Complainants” include the Environmental Transformation Movement of Flint (“ETM”), Flint Rising, and the St.

Francis Prayer Center. These groups have been involved in environmental justice advocacy on behalf of residents of Flint.

- I. Multiple parties, including Ajax, a coalition of Flint-area environmental groups, and the City of Flint appealed the issuance and terms of the permit to the State of Michigan's Genesee County Circuit Court, Consolidated Case Nos. 2022-116871-AA, 2022-116880-AA, and 2022-117201-AA. On June 20, 2023, the Circuit Court upheld the issuance and terms of the permit, finding that EGLE's actions were authorized by law, including its analysis of the application for the permit and imposition of site-specific conditions in the permit. Specifically, the Court held, in part, that EGLE "did not exceed its statutory authority when it utilized ideas generated from public comments to improve the final permit over the draft permit by banning RUO [recycled used oil] and setting lower emissions limits. In doing so, it was acting pursuant to its authority under Rules 224 and 205."

III. SPECIFIC COMMITMENTS TO RESOLVE EPA COMPLAINT NO. 01RNO-22-R5

A. Commitments Pertaining to Future Public Engagement in Genesee Township

1. EGLE has a core value of engagement with the public and meeting communities where they are so all citizens have an opportunity to engage with their government and have their voices heard. EGLE will be continuing this effort, especially in EJ communities or when addressing a complicated or controversial decision. As needed, EGLE has and plans to continue to participate in meetings with community groups formed in Genesee Township. If a new community group is formed in the area surrounding the Ajax facility (such as the Community Action Board in Genesee Township), EGLE will attend meetings to which it has been invited on at least a quarterly basis for a period of not less than one year. EGLE will provide information regarding activities conducted by EGLE in the community and share available information regarding facilities regulated by EGLE within the community. To the extent agenda items are raised outside the jurisdiction of EGLE, but within the jurisdiction of other state agencies, EGLE will attempt to facilitate the attendance of appropriate staff from other state agencies.
 - a. EGLE, by October 31, 2024, will send the EPA a detailed description of any public engagement activities regarding air permitting that EGLE participated in or facilitated in Genesee Township from the time this Agreement is executed through September 30, 2024 (such as meetings with community groups, both current and any to be formed, as well as any other outreach activities).
2. EGLE continues to be willing to provide one Purple Air Sensor for the community surrounding the Ajax facility for a period of two years and assist with installation of the sensor if the needed power connection and WiFi access can be secured. EGLE will provide public education support for explaining the monitoring data

from the Purple Air Sensor. The parties acknowledge the purpose of the monitor will be to provide information to the community regarding air quality and is not for the purpose of determining a facility's compliance with any permit issued by EGLE. Information from the monitor may be used with other available information to assess potential conditions in the area to determine if any further investigation of area facilities is warranted. EGLE will be available to assist the host organization to troubleshoot problems with the air monitor's operation, such as equipment malfunctions. EGLE will provide general information regarding the Purple Air Sensor program on its website. Within 30 days of the installation of the Purple Air Sensor in the Genesee Township community, EGLE will announce it via social media and other appropriate communication methods. EGLE will send the EPA the link to the announcement within one week of its posting.

3. EGLE is currently pursuing funding for a community driven Protocol for Assessing Community Excellence in Environmental Health ("PACE-EH")⁵ for the community surrounding the Ajax facility. If funding is secured, EGLE will participate in the process and provide information it has available regarding the community. EGLE understands the process could take up to 24 months and will be working with other organizations to achieve project goals. EGLE worked closely with the ETM to develop the funding proposal and identify project partners. If the funding is secured, the ETM will be receiving a portion of the funding and playing a lead role in the project. The PACE-EH model brings together multiple stakeholders including impacted community members, environmental justice and community organizations, local health, government agencies, academia, local business organizations and others to form a Community-based Environmental Health Assessment Team ("CEHAT"), to conduct a community environmental health assessment, and to develop action plans for priority issues identified by the community. EGLE and Michigan Department of Health and Human Services (which is another named project partner) will work with other state agencies through Michigan's Interagency Environmental Justice Response Team to help address prioritized issues in the community. This project will use the CDC-developed PACE-EH, which is a process similar to a health impact assessment to assess and analyze the cumulative environmental health of communities and create plans to address threats and create improvements. If current funding opportunities are unsuccessful, EGLE will continue to pursue funding through other state and federal opportunities.
 - a. If funding for PACE-EH is secured, within 30 days of the starting date of the project, EGLE will develop a PACE-EH Project webpage that includes information on the project and updates on progress and send the link to the EPA.

⁵ For more information on this approach, please see <https://www.cdc.gov/nceh/ehs/docs/pace-eh-guidebook.pdf>.

- b. Should current funding efforts be unsuccessful, within 180 days of being notified of such, EGLE will submit to the EPA a list of alternate potential funding opportunities that EGLE has identified and is, or will be, pursuing to undertake the same effort or one designed with similar goals. EGLE will continue to collaborate with the EPA to identify potential funding mechanisms.

B. Commitments Regarding EGLE's Education and Outreach on Its Air Permitting Program

1. EGLE will revise technical assistance and information materials for prospective air permit applicants and communities and conduct education and outreach activities (such as providing technical assistance, regularly scheduled webinars, information available on EGLE's website, etc.) to also address consideration of environmental justice, equity, and civil rights principles in EGLE's air permitting program. The education and outreach materials will include the following information, written in plain language, regarding how EGLE conducts its air permit review process:
 - a. An explanation of how EGLE uses the MiEJScreen tool to review areas surrounding the location of a new Permit to Install or modification of an existing air permit, in order to better understand and protect communities and design steps to ensure community engagement and public participation efforts are conducted properly and are designed to address issues such as limited English proficiency and the need for translation services.
 - b. An explanation of the criteria EGLE uses when determining whether to hold public meetings and hearings to ensure the community understands the permit application, the applicable legal requirements, and has opportunities to provide public comments prior to a final decision by the department.
 - c. An explanation of the different regulations which may apply on a case-by-case basis to a permit application, when and how modeling is used to predict potential emissions, how health screening levels are used to protect residents in the community, and the department's discretion to impose reasonable permit conditions to mitigate potential impacts from the proposed facility. These materials will cover statutory requirements and requirements set forth in generally applicable rules (Mich. Admin. Code, Rules 336.1201- 336.2908) including Michigan's Air Toxic Program (Mich. Admin. Code, Rules 336.1224 – 336.1233).
 - d. How EGLE will collaborate with local units of government to host an event regarding the role zoning decisions may have on subsequent EGLE decision making, especially in those cases where industrial zoned property abuts residential areas.
2. EGLE will share with the EPA, Complainants, and other environmental justice advocates, including the Michigan Advisory Council on Environmental Justice, its education and outreach materials (e.g., technical assistance, regularly scheduled

webinars, information available on EGLE's website) and its plan for engaging potential air applicants, communities, and local units of government within 180 days of the effective date of this Agreement.

- a. The EPA will provide comments to EGLE regarding the materials and the engagement plan within 30 days of receipt.
- b. EGLE will consider those comments and share the final materials with the EPA prior to publishing the final materials on its website.

C. Commitments Regarding EGLE's Public Participation Policy

1. EGLE-wide Protocols – During the COVID-19 pandemic EGLE augmented public input opportunities in ways designed to allow for a broader menu of options for providing public input into department decision making. As the need for restrictions on public, in-person gatherings has diminished, EGLE plans to review EGLE's Policy and Procedure No. 09-007, Policy on Public Involvement in Department Decisions, and make any needed revisions regarding the continued use of some of the options on a more permanent basis and avoiding conflicts with religious holidays or elections.
 - a. EGLE will share any revisions to Policy and Procedure No. 09-007 with the EPA within 90 days of the effective date of this Agreement and will take public comments on the proposed revisions prior to finalizing the document.
 - b. EGLE will consider all comments received during its public comment period, including the EPA's comments, and EGLE will share final material with the EPA. EGLE will publish the final materials on its website.
2. Online Information Portal – Investments currently being made by EGLE in information management technology for the Air Quality Division which will allow EGLE to provide for greater transparency into decision making through immediate online access to a wider variety of documents, such as permit applications, inspection reports, and proposed permits subject to public comment. It is EGLE's intent to create electronic tools that allow residents to use the system to directly download the documents, reducing the need to go through the Freedom of Information Act process to obtain documents from EGLE. At a minimum, the system is expected to be searchable by the facility name, location of the proposed facility, type of facility, and permit application number. EGLE will describe how this portal would intersect with EGLE's listserv. EGLE will share information on how community members can be added to EGLE's listserv and request updates on particular permit applications. Information regarding how to use the new system, including how the portal will interact with EGLE's listserv and how community members can be added to the listserv, will be developed and be available on EGLE's website.

- a. EGLE will submit the information on how to use the new system to the EPA prior to publishing on its website and provide the EPA with a link to the final materials on its website.

D. Commitments Regarding New Environmental Justice Grant Program

1. EGLE will develop and issue information and guidance for how the public may submit grant applications under the new EGLE's Environmental Justice Public Health Protection program⁶ and other relevant grant opportunities within EGLE, as appropriate, to address environmental justice concerns such as air monitoring, air filtration, removal of blighted buildings, and related public health concerns identified by a community or community group. EGLE anticipates that this will occur prior to January 1, 2024. Through the Office of the Environmental Justice Public Advocate, EGLE will establish final program design and scoring criteria in consultation with environmental justice communities and representatives. EGLE will produce guidance materials that educate community members on how they can apply for the EJ grants and provide grant application assistance as needed.
 2. EGLE will submit the following to the EPA for review:
 - a. Draft guidance materials (e.g., FAQs, brochures, grant application guidance documents) described under Section D.1. above for EGLE's new Environmental Justice Public Health Protection program and other relevant grant opportunities within EGLE;
 - b. Draft public outreach materials that EGLE plans to publish on its website and transmit through other channels that include the guidance materials above;
 - c. The EPA will provide comments within 30 days of receipt of the materials above; and
 - d. EGLE will consider the EPA's feedback and provide the EPA copies of the final materials prior to publishing on its website.
- E. By signing this Agreement, EGLE and the EPA commit to perform the obligations recited in Sections III A-D.

IV. GENERAL CONSIDERATIONS

- A. The EPA will monitor the implementation of the commitments in Section III of this Agreement, Specific Commitments to Resolve EPA Complaint No. 01RNO-22-R5, as appropriate, to ensure they are fully implemented by both parties. Once the commitments of this Agreement are satisfied, the EPA will issue a letter documenting closure of its monitoring actions in EPA File No. 01RNO-22-R5 and closure of the Complaint as of the date of that letter.

⁶ The legislature has authorized \$20 million in funding for this purpose, which may only be used consistent with the provisions included within the appropriation authorization.

- B. The EPA will share with Complainants the information specified above in sections A.2 and B.2 provided by EGLE to the EPA during the monitoring period of this Agreement.
- C. Complainants will have an opportunity to provide feedback to the OECRC regarding the shared information as identified above, during an identified period of time during the monitoring period.
- D. The EPA will review and provide feedback about any documentation submitted by EGLE demonstrating completion of each commitment and will provide an assessment as to whether the documentation satisfies the commitment.
- E. The EPA will, upon request, provide technical assistance to EGLE regarding any of the civil rights obligations and actions that need to be taken to ensure compliance with the requirements of Title VI and other federal non-discrimination laws and the EPA regulations at 40 C.F.R. Parts 5 and 7.

V. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, “day” will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next working day.
- B. Service of any documents required by this Agreement will be made personally via electronic mail as outlined below.
- C. Electronic documents submitted by EGLE to the EPA via email will be sent to the following email address: anhthu.hoang@epa.gov, with a copy to the Case Managers: pantziris.jack@epa.gov and liesner.katelyn@epa.gov.
- D. Documents submitted by the EPA to EGLE will be sent to the following email address: CliftJ@Michigan.gov, with a copy to AG-ENRA-eFiles@Michigan.gov. Documents mailed by the EPA will be mailed to the following addresses: Deputy Director, Department of Environment, Great Lakes, and Energy, 525 West Allegan Street, P.O. Box 30473, Lansing, MI 48909-7973 and Division Chief, Environment, Natural Resources, and Agriculture Division of the Michigan Department of Attorney General, P.O. Box 30755, Lansing, MI 48909.

VI. EFFECT OF THE AGREEMENT

- A. This Agreement serves to resolve the issues accepted for investigation in this Complaint. As such, subject to EGLE's good faith implementation of this Agreement, EPA is closing its investigation of this Complaint and will not issue preliminary findings.
- B. EGLE understands that, if necessary, the EPA may interview staff and request such additional reports or data as are necessary for the EPA to determine whether EGLE has fulfilled the terms of this Agreement.
- C. EGLE understands that the EPA will not close its monitoring of this Agreement until the EPA determines that EGLE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in the EPA re-opening an investigation.
- D. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to EGLE's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Director of EGLE and the Director of the OECRC.
- E. This Agreement constitutes the entire agreement between EGLE and the EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by EGLE and the EPA in accordance with the provisions Section VI(C) above.
- F. This Agreement does not affect EGLE's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect the EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- G. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Deputy Director of EGLE has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of the OECRC has the authority to enter into this Agreement.

On behalf of the U.S. Environmental Protection Agency,

ANHTHU HOANG
Digitally signed by ANHTHU
HOANG
Date: 2023.08.08 17:36:30 -04'00'

August 8, 2023

Anhthu Hoang, Acting Director
Office of External Civil Rights Compliance

(Date)

On behalf of the Michigan Department of Environment, Great Lakes, and Energy,

James Clift Digitally signed by James Clift
Date: 2023.08.09 09:15:37
-04'00'

8/9/2023

James Clift, Deputy Director

(Date)

Exhibit 56



EGLE

EGLE statement on resolution of Flint-area Civil Rights complaint

August 10, 2023

Media Contact:

EGLE Media Office

EGLE-Assist@Michigan.gov

517-284-9278

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has entered into an Informal Resolution Agreement with the U.S. Environmental Protection Agency (EPA) to resolve a Title VI Civil Rights complaint filed by a coalition of Flint community groups in late 2021. The complaint was related to a Clean Air Act permit issued to the Ajax Asphalt plant in Genesee Township on Flint's border.

The agreement is not a finding by EPA or admission by EGLE of noncompliance with Title VI of the Civil Rights Act. EGLE is confident that its program fully complies with Title VI and the protection of civil rights. The purpose of this agreement is to memorialize our ongoing commitment to environmental justice.

We realize the agreement does not address all the issues raised by the local residents during our discussions. We remain committed to continuing to work with the community to address ongoing concerns. This includes our collaborative work with EPA to address challenges presented in overburdened communities.

The agreement includes:

- Enhancing community engagement with local residents,

- Providing a Purple Air monitor for the community,
- Pursuing funding for a community-led public health assessment,
- Revising and continuing air permitting-focused education and outreach activities,
- Updating public participation policies,
- Continuing work on an online information portal for the Air Quality Division to transparently track permit applications, permit decisions, inspections and enforcement decisions, and
- Providing equitable means for input from community on the new Environmental Justice Public Health grants included in EGLE's FY 2024 budget (\$20 million)

EGLE looks forward to continuing to work closely with communities, environmental justice advocates, and permit applicants to ensure that protections available under the law for residents near polluting facilities are enforced, and to encourage public policy advancements that address the unique burdens many frontline communities face.

Department of Environment, Great Lakes, and Energy

Air Quality

Department of Environment Great Lakes and Energy

MI Newswire

EGLE News

Genesee

Related News

Exhibit 57

INTERIM RESOLUTION AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF JUSTICE AND

THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

THE ALABAMA DEPARTMENT OF PUBLIC HEALTH

DEPARTMENT OF JUSTICE NUMBER 171-3-14

**DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE FOR CIVIL RIGHTS
TRANSACTION NUMBER 22-451932**

I. BACKGROUND

- A. On November 9, 2021, the U.S. Department of Justice, Civil Rights Division and the U.S. Department of Health and Human Services Office for Civil Rights (collectively, “the United States”) opened an investigation to determine whether the Alabama Department of Public Health (ADPH) and the Lowndes County Health Department (LCHD) (collectively, ADPH) are engaging in race discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and its implementing regulations, 28 C.F.R. §§ 42.101-112; 45 C.F.R. §§ 80.1-80.13 (collectively, Title VI), and Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, as implemented by 45 C.F.R. Part 92 (collectively, Section 1557), in the way that ADPH administers its onsite wastewater disposal and infectious disease and outbreaks programs.

The United States has jurisdiction over this matter under Title VI and Section 1557. Title VI prohibits race, color, and national origin discrimination in any program or activity receiving federal financial assistance, and the Title VI implementing regulations prohibit recipients from using criteria or methods of administering their programs that have the effect of subjecting individuals to discrimination or of substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. 42 U.S.C. §§ 2000d-2000d-7; 28 C.F.R. §§ 42.101-112, 42.401-415; 45 C.F.R. §§ 80.1-80.13. Section 1557 provides that an individual shall not on the grounds prohibited under Title VI, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving federal financial assistance. 42 U.S.C. § 18116; 45 C.F.R. Part 92. Both statutes also prohibit retaliation. 28 C.F.R. § 41.107(e); 45 C.F.R. § 80.7(e).

- B. During the course of the investigation, the United States has reviewed thousands of pages of documents, interviewed ADPH leadership and staff, Lowndes County residents,

members of the Lowndes County Board of Commissioners, and various other stakeholders. The United States has also conducted an onsite visit to Lowndes County and held community meetings. While the United States' investigation remains ongoing, the information reviewed by the United States establishes that conventional onsite wastewater systems are often incompatible with the impermeable Black Belt soil prevalent throughout Lowndes County and that conventional systems improperly designed or installed in impermeable soils are expected to — and often do — fail. In the absence of viable wastewater disposal solutions, for generations, many predominantly low-income Black residents of Lowndes County have resorted to “straightpiping” bathwater, fecal matter, and other waste away from their homes. “Straightpiping” refers to a method of attempting to manage wastewater, involving a series of ditches or crudely constructed piping systems to guide human waste away from the residence. The investigation has further shown that due to multiple barriers, most Lowndes County residents do not have the means to obtain, maintain, or repair a functioning, ADPH-permitted onsite wastewater system.

C. Through the course of the investigation, the United States has identified areas of ADPH's operations that raise concerns about noncompliance with Title VI and/or Section 1557. These areas include, but are not limited to:

1. ADPH's role in the enforcement of Alabama laws that threaten and/or impose criminal and monetary sanctions against residents who do not have the means to obtain a functioning ADPH-permitted onsite wastewater system, which has made many Lowndes County residents fearful about coming forward to report public health harms and concerns; and
2. ADPH's response in addressing health risks posed to Black residents in Lowndes County and ADPH's practices related to collection of information on the scope and severity of raw sewage exposure as well as the identity of residents harmed by this exposure.

D. During the investigation, ADPH has stated its commitment to implement measures to abate public health nuisances, address and prevent infectious diseases and outbreaks, collect and maintain data in compliance with Title VI and Section 1557, and protect public health and improve the onsite wastewater infrastructure of Lowndes County. In light of that commitment, the United States and ADPH (collectively, the Parties) have voluntarily entered into this Interim Resolution Agreement (Agreement). This Agreement does not constitute an admission of noncompliance with Title VI and Section 1557 by ADPH; nor does this Agreement constitute a finding of noncompliance by the United States.

II. INTERIM VOLUNTARY RESOLUTION TERMS

The United States has agreed to suspend further investigation of this matter, provided that ADPH implements the terms of this Agreement in good faith and subject to the enforcement terms set forth in Section V of this Agreement. ADPH agrees to take the series of steps outlined in

Section II in order to formulate a Public Health and Infrastructure Improvement Plan that will be used as the basis for the final agreement resolving this matter.

A. ADPH Will Impose a Moratorium on Enforcement of the Sanitation-Related Criminal Statutes and Related Lien Statute Against Individual Residents or Property Owners in Lowndes County

1. Under state law, ADPH is authorized to refer potential violations to law enforcement, which may then result in the issuance of fines, fees, or other penalties. Under state law, ADPH is also authorized to compel connection to private disposal systems, the costs for which is recoverable through a lien placed on the property by the Lowndes County Commission. ADPH will immediately implement a moratorium on referral for prosecution, which could result in fines and fees, against individual residents or property owners in Lowndes County with inadequate onsite wastewater systems who do not have the means to install or repair an ADPH-permitted onsite wastewater system designed to function at the residence, and who take these steps to come into compliance with the Alabama sanitation-related statutes: (i) provide information to ADPH to identify their method of wastewater disposal in response to a survey or study, and/or (ii) submit a program application for a residential onsite system under any program overseen by ADPH and confine any sewage, where discharged, to the individual's property. This includes a moratorium on swearing out warrants and summonses for unlawful sewage disposal in Lowndes County pursuant to Alabama's sanitation-related statutes, and taking any action pursuant to Ala. Code § 45-43-171(a)(2). The moratorium will be in effect until the termination of this Agreement as provided in Section VI.B. and information collected prior to this termination date will not be the basis for referrals that were not otherwise available under the moratorium.
2. As used in this Agreement, "inadequate onsite wastewater systems/system" refers to residences that are not connected to a municipal sewer system and lack a functioning, ADPH-permitted onsite wastewater system. This includes residences with no system for removing wastewater from the home, and those which rely on any other method apart from a functioning, ADPH-permitted onsite wastewater system. Examples of inadequate onsite wastewater systems can include a failing septic tank, unpermitted septic tank, unpermitted outhouse,¹ cesspool, or use of straight pipes. As used in this Agreement, an individual who "does not have the means to install or repair an ADPH-permitted onsite wastewater system" refers to a Lowndes County resident or homeowner who faces one or more of the following barriers to obtaining a functioning, ADPH-permitted onsite wastewater system: lack of finances or assets, lack of clear title to property, or other non-legal or non-financial factors/barriers that limit an individual's ability to complete the process of obtaining a functioning, ADPH-permitted onsite wastewater system. This term shall be interpreted expansively, with the presumption that Lowndes

¹ The parties understand that under Ala. Admin. Code § 420-3-1-.43, outhouses or "pit privies" may be permitted only in specific circumstances.

County residents who currently do not have an ADPH-permitted onsite wastewater system experience financial, legal, or other barriers (not legal or financial) to install/repair such a system. As used in this Agreement, “sanitation-related statutes” refers to any provision of the Code of Alabama, the Alabama Administrative Code, or any other State or local statute or regulation used by ADPH for the administration of the agency’s onsite wastewater program. This includes Ala. Code § 22-26-1 et seq. and Ala. Code § 45-43-171.

3. Within 30 days of the effective date of this Agreement ADPH will issue a press release by posting it on its website and on social media sites and other broadly accessible platforms and disseminate or mail notices to all medical providers covering Lowndes County and to each household to inform residents of Lowndes County of the content and purpose of the Moratorium, subject to approval by the United States prior to publication. As used in this Agreement, medical providers include, but are not limited to, school health centers, pharmacies, outpatient care providers, hospitals, and clinics.
4. ADPH’s “Official Notice of Violation” for Ala. Code §§ 22-2-14, 22-26-1, et seq. as related to inadequate onsite wastewater systems will be revised to prominently include the content outlined in the Appendix to this Agreement.
5. ADPH, including third party contractors or agents working on ADPH’s behalf, will not refer for criminal prosecution or compel connection to private disposal systems, any Lowndes County resident or property owner who (1) does not have the means to connect to an available public sewerage system or (2) does not have the means to install/repair an ADPH-permitted onsite system covered by Ala. Code § 45-43-171.
6. Within 30 days of the effective date of this Agreement, ADPH will inform the Lowndes County Board of Commissioners that it will not compel connection to an onsite system pursuant to Ala. Code § 45-43-171(a)(2) while the moratorium (Section II.A.) is in effect.

B. ADPH Will Conduct a Public Health Information Campaign Regarding Risks Associated with Raw Sewage Exposure

1. Within 90 days of the effective date of this Agreement, ADPH will expand its public health information campaign to inform residents about the risk of contact with raw sewage; symptoms of illness associated with raw sewage; how to contact a health care provider regarding concerns of such illnesses; methods of preventing such illness; safe cleanup after a sewage backup inside a home; procedures for reporting issues related to raw sewage exposure to ADPH; and how to properly use, care for, and maintain a septic system.
2. ADPH will provide all draft public health information campaign print materials and all materials posted to the ADPH website to the United States for approval and provide a timeline and other appropriate updates on the dissemination of these

materials. The United States will not unreasonably withhold approval. As used in this Agreement, materials do not include social media posts.

The educational campaign will include remote areas of Lowndes County. The campaign will include door-to-door outreach, where feasible, radio and print ads, flyers, and mailers, and other appropriate communication platforms.

3. ADPH will make a good faith effort to collaborate with other Federal partners to implement the informational campaign, including, but not limited to, the U.S. Centers for Disease Control and Prevention (CDC), Health Resources and Services Administration, and the Administration for Children and Families.
4. ADPH will provide materials from its public health information campaign to all identified persons who do not have a lawful means of sewage disposal.
5. The public health information campaign will last for the duration of this Agreement.

C. ADPH Will Share Information with Health Care Providers on Symptoms of and Illnesses Related to Raw Sewage Exposure

1. Within 90 days of the effective date of this Agreement, ADPH will share with health care providers for Lowndes County residents, including school-based health centers and providers, educational materials about health conditions associated with exposure to raw sewage to ensure that health care providers consider sewage exposure as a possible contributing factor to illness in patients presenting with compatible symptoms. This information-sharing may expand upon any existing efforts by ADPH to create a continuing medical education program for medical providers, to identify symptoms of and treatment for sanitation-related infections and other parasitic infections and illnesses related to exposure to raw sewage.
2. ADPH will make a good faith effort to work in partnership with institutes of higher education, medical associations, and/or community-based organizations with specialized knowledge in the relevant issue areas to implement and design the continuing medical education program.
3. ADPH will provide all current and proposed educational materials prepared or collected to satisfy this provision, Section II.C., to the United States for approval.
4. ADPH will provide the educational materials described above to medical offices which serve Lowndes County residents to share with patients. Prior to distribution of these educational materials, ADPH will provide to the United States, for approval, a list of health care providers and medical offices that will receive the materials from ADPH.
5. ADPH will share the educational materials described above with healthcare providers statewide via email using Alabama Emergency Response Technology health alert network messages.

6. ADPH will make the educational materials described above available on ADPH Infectious Diseases and Outbreaks webpages.
7. The actions described in this provision, Section II.C., will last for the duration of this Agreement.

D. ADPH Will Request Environmental Health Technical Assistance from CDC to Assess Exposure Risk from Inadequate Onsite Wastewater Systems in Lowndes County

1. Within 30 days of the effective date of this Agreement, ADPH will make a formal request to CDC for environmental health technical assistance to assess levels of risk of infectious diseases and public health threats that may be associated with exposure to raw sewage and related environmental conditions from inadequate onsite wastewater system in Lowndes County. As used in this Agreement, “environmental health technical assistance” may include a CDC Community Assessment for Public Health Emergency Response (CASPER) or any other forms of technical assistance deemed appropriate by CDC.
2. The purpose of the environmental health technical assistance will be to: (a) investigate the prevalence and severity of risk of infectious diseases and public health threats that may be associated with exposure to raw sewage and related environmental conditions in Lowndes County by population cluster or other appropriate subset and (b) advise ADPH on the development and implementation of efforts to reduce the risk of disease. The environmental health technical assistance will be concentrated on residences with inadequate onsite wastewater systems, and those located in proximity to wastewater treatment lagoons experiencing sewer backup, overflow, and related conditions.
3. In relation to any technical assistance activities, ADPH will work directly with CDC to ensure that personally identifiable information is protected and will notify Lowndes County residences that any communication as part of the CDC technical assistance will not be used to cite or refer any resident for prosecution, which could result in fines or fees, under the Alabama sanitation-related statutes.
4. Should CDC approve the request for environmental health technical assistance, ADPH agrees to cooperate in good faith with the CDC and any other federal, state, local, non-governmental, community organizations, and academic institutions which CDC identifies as part of the environmental health technical assistance. This cooperation includes the provision of requested information and staff resources as deemed necessary by CDC.
5. ADPH agrees to implement any recommendations developed through the course of the environmental health technical assistance, which may include discussing potential implementation considerations with the appropriate parties. ADPH agrees to prioritize the implementation of any recommendations, such as installation of onsite wastewater systems, based on risk of exposure to infectious

diseases and public health threats as determined by CDC. ADPH agrees to share any CDC reports and/or any information obtained from the CDC with the United States within 10 calendar days of ADPH's receipt.

E. ADPH Will Conduct a Comprehensive Assessment of Site Conditions and Prerequisites to Installation of Onsite Wastewater Systems in Lowndes County

1. ADPH will promptly conduct a comprehensive assessment of the site conditions and prerequisites to installation of onsite wastewater systems for each residence with an inadequate onsite wastewater system in Lowndes County, subject to the approval of the United States. The assessment will identify each residence in Lowndes County with an inadequate onsite wastewater system, and collect the following categories of information by address: (a) level of risk of infectious diseases or other public health threats associated with exposure to raw sewage and other related environmental conditions; (b) site conditions related to selection of an appropriate onsite wastewater system; (c) any legal, financial, or other barriers that must be resolved prior to installation of an appropriate onsite wastewater system; and (d) household demographic information, including race/ethnicity data.
2. As part of this assessment, ADPH will incorporate current efforts to plot existing permitted onsite wastewater systems in Lowndes County using GIS mapping and any other relevant information ADPH can access. The assessment shall incorporate technical assistance and resources provided by or available from CDC (Section II.D.) or any other appropriate federal, state, local, non-governmental entity, community organizations, and academic institutions. ADPH will observe trespassing laws and request consent before entering private property, as necessary. The Parties understand that each category of the Assessment may require independent collections of information that may occur concurrently, may be performed by separate entities, and is subject to the approval of the United States and reporting requirements in Section III.
3. ADPH agrees to contract with an independent third party(ies) with appropriate expertise to collect the information needed to complete the comprehensive assessment. If ADPH, despite good faith efforts, is unable to identify any available qualified third party to carry out the provisions of this Section, ADPH will timely notify the United States and the Parties will negotiate in good faith to identify an alternative solution.
4. Within 30 days of the effective date of the Agreement, ADPH will provide the name of any proposed independent third party to the United States for approval, inform the United States of any prior contractual or fiduciary relationship between ADPH and the independent third party and, upon approval, include the name of the independent third party as part of Section II.E.5. below. Should ADPH determine that a request for proposal is required, ADPH shall provide the name of the entity selected through the competitive bidding process within 45 days of the effective date of this agreement. ADPH will provide notice to the United States

where a competitive bid process or similar procedure to hire a third party will take or is expected to take more than 45 days to complete. Once the independent third party has been selected and approved by the United States, the name of the third party shall be made public in a press release issued by ADPH.

5. The United States will approve any assessment methodology prior to its implementation, including, as necessary, the collection of information to ensure compliance with Title VI and Section 1557. The United States will work with ADPH to revise and finalize the methodology as warranted.
6. Prior to commencement of the comprehensive assessment, ADPH will issue a press release, post on its website, and mail notice to each household to inform Lowndes County residents that the information sought for this assessment is (1) part of ADPH's compliance with federal civil rights laws and an interim resolution Agreement with the United States and (2) will not be used to cite or refer any resident for prosecution, which could result in fines or fees, under the Alabama sanitation-related statutes.
7. ADPH will provide to the United States a status update on the assessment's progress as required under Section III (Reporting) below.
8. ADPH will complete this assessment within six months of the effective date of this Agreement and provide the results and other assessment data to the United States.
9. Within 30 days of completing the relevant stages of the assessment, as determined by the Parties, ADPH will post a summary of the assessment results on its website. The United States will approve the initial public summary on the assessment's results prior to publication.

F. ADPH Will Develop a Public Health and Infrastructure Improvement Plan

1. ADPH will develop a Draft Public Health and Infrastructure Improvement Plan (PHIIP). The PHIIP will set forth actions that ADPH will take to protect public health and improve onsite wastewater infrastructure of Lowndes County. ADPH agrees that these actions will be prioritized based on risk of exposure to infectious diseases and public health threats. The PHIIP will set forth, at a minimum:
 - a. The methodology for selecting and prioritizing Lowndes County residences that will receive ADPH-permitted systems, applying the findings of the comprehensive assessment;
 - b. The timeline for installing ADPH-permitted systems at each residence based upon the comprehensive assessment;
 - c. The number and type of ADPH-permitted systems that will be installed at each residence based on the comprehensive assessment;
 - d. The process for informing Lowndes County residents of Section II.F.1.a-c;

- e. Plans for obtaining and using federal funding, including American Rescue Plan Act, and other funding or technical assistance designated to ADPH from the Alabama legislature or other entities, to (a) install technologically sound, ADPH-permitted onsite wastewater systems designed to function in Lowndes County site conditions, (b) expand public health campaigns in Lowndes County, and (c) develop and provide educational materials for health care providers for Lowndes County residents on health conditions associated with exposure to raw sewage as a possible contributing factor to illness in patients presenting with compatible symptoms.
 - i. The plans will include identifying funding and technical assistance opportunities for programs to protect public health and improve the onsite wastewater infrastructure of Lowndes County.
 - ii. The plans will include designating a person responsible for overseeing implementation of the plans.
 - iii. The plans will include informing the United States of the status of funding and technical assistance applications by ADPH as provided in Section III (Reporting).
- f. Initiatives to expand access to functioning, ADPH-permitted onsite wastewater systems, including consideration of parts and services warranty requirements;
 - i. For any such initiatives, ADPH will not seek a lien in relation to installation or maintenance of systems;
 - ii. For any such initiatives, ADPH will develop a plan to ensure that any agent/contractor working on ADPH's behalf will not seek a lien in relation to installation or maintenance of systems.
- g. Plans for continued collection of race and ethnicity data of the beneficiaries of ADPH's onsite wastewater program for the United States to ascertain compliance with Title VI and Section 1557;
- h. Plans for continued implementation of the Public Health Information Campaign (Section II.B.) and Information-Sharing with Health Care Providers on Symptoms of and Illnesses Related to Raw Sewage Exposure (Section II.C.);
- i. Plans to screen and monitor for infectious diseases and outbreaks related to raw sewage exposure;
- j. Plans for immediate temporary solutions for residences with inadequate onsite wastewater systems pending installation of functioning, ADPH-permitted onsite wastewater systems; and any additional solutions to expand access to functioning, ADPH-permitted onsite wastewater systems.

- k. Plans for (a) continuation of the Moratorium for all Lowndes County residents or property owners with inadequate onsite wastewater systems who do not have the means to install/repair an ADPH-permitted wastewater system designed to function at the residence and who do not have an installed ADPH-permitted onsite wastewater system as of January 1, 2025, and (b) conclusion of the Moratorium after installation of ADPH-permitted onsite wastewater systems for all residents described herein; and
 - l. Plans for implementing the recommendations of any CDC environmental health technical assistance described in Section II.D.
 - m. The PHIIP will include the process that ADPH will follow to solicit, coordinate, engage with, and receive the input of Lowndes County residents, representatives of Lowndes County residents, wastewater, infrastructure, soil, and engineering experts, and environmental justice advocates, on the amelioration of public health effects of inadequate onsite wastewater systems.
2. ADPH is required to incorporate the input of these groups covered in II.F.m, through community engagement and other platforms on a quarterly basis, in developing the Draft PHIIP and Final PHIIP. ADPH is required to provide a status update on this process to the United States as set forth in Section III (Reporting).
3. The initial Draft PHIIP will be submitted to the United States within six months of the effective date of this Agreement. ADPH will submit a Final PHIIP within one year of the effective date of this Agreement, subject to the approval of the United States, and engage in good faith efforts to implement all PHIIP provisions.
4. The Final United States-approved PHIIP will incorporate Sections III (Reporting), IV (General Terms), and V (Enforcement Terms) of this Agreement and will cover a three-year period from the date that the United States approves the PHIIP with termination as provided in Section VI (Effective Date and Termination), or as modified by all Parties to this Agreement.

G. Funding and Technical Assistance for Activities Related to Compliance with the Interim Resolution Agreement Terms

1. ADPH may utilize any available funding, including but not limited to funds received through the American Rescue Plan Act, to support its activities to comply with the terms of this Agreement. If ADPH determines that it does not have sufficient funds or resources to carry out any of the terms of this Agreement, ADPH agrees to apply for any appropriate funding or program that can address such deficiencies. ADPH is committed to working with the United States to identify applicable funding and technical assistance sources. The United States will provide relevant information to support ADPH's efforts, as appropriate.
2. As set forth in Section III, ADPH will provide regular updates to the United States on its efforts to seek appropriate funding and technical assistance. Those

updates shall include, without limitation, the specific steps that ADPH has taken to secure funding or technical assistance, including designating a person responsible for identifying and applying for any appropriate funding or program identifying potential funding sources, the status of any applications for those funding sources, and ADPH's engagement with other relevant entities that may also be securing funding to address the issue of inadequate onsite wastewater systems and risk of exposure to raw sewage and related public health threats in Lowndes County.

III. REPORTING

On the 15th day of each month, unless modified by the Parties to this Agreement, ADPH will provide to the United States status updates on its progress toward compliance with all provisions of this Agreement. ADPH will email these updates to the following individuals, or other persons as may be designated by the United States:

Selin Cherian-Rivers

Attorney
Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
150 M Street, NE
Washington, DC 20530
Selin.Cherian-Rivers@usdoj.gov

Barbara Stampul

Regional Manager
Office for Civil Rights
U.S. Department of Health and
Human Services
Office for Civil Rights
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Barbara.Stampul@hhs.gov

The Parties agree to engage in additional communication apart from these monthly updates, as needed.

IV. GENERAL TERMS

- A.** Each Party representative executing this Agreement certifies that they are authorized to enter into it, consent to its terms, and legally bind their party to it.
- B.** If any provision in this Agreement is found invalid, all other provisions remain valid.
- C.** The provisions in this Agreement are the entire agreement. No other statement or promise, written or oral, made by either party or its agents regarding the matters raised in this Agreement, that is not contained or referred to in this Agreement, will be enforceable. This Agreement may be amended only in writing.
- D.** Should ADPH need to modify this Agreement because changed conditions make performance impossible, ADPH will send the United States a written request that includes a detailed explanation of why the modification is needed. The United States will respond in a timely manner. The United States must agree in writing before a modification may occur. The United States will not unreasonably withhold approval.

- E.** ADPH will not intimidate, threaten, coerce, discriminate, or take other adverse action against any individual who has made a complaint, testified, assisted, or participated in any manner in this Title VI and Section 1557 investigation.
- F.** This Agreement does not prohibit any individual from pursuing a Title VI complaint, or any other action allowed by law, against ADPH. This Agreement does not affect the United States' ability to investigate or act on any allegations of Title VI violations beyond those included in this matter.
- G.** ADPH will ensure that any written materials disseminated to the general public are written in plain language and accessible to persons with communication disabilities and individuals with limited English proficiency.


V. ENFORCEMENT TERMS

- A.** If ADPH, despite good faith efforts, anticipates that it will be unable to meet any deadline set forth in this Agreement, it will timely notify the United States of the delay and the reason for it. The Parties will negotiate in good faith to agree to a reasonable adjusted timeline.
- B.** If, during the course of this Agreement, the United States determines that ADPH has not complied with the terms of the Agreement, the United States will provide ADPH written notice of the noncompliance and the Parties will attempt to resolve the issue(s) in good faith.
- C.** If the United States determines that ADPH has not in good faith complied with the terms of this Agreement, the United States will resume investigation of ADPH's administration of its onsite wastewater and infectious diseases and outbreaks programs under Title VI and Section 1557 and take additional steps to achieve compliance per 28 C.F.R. § 42.107(d).

VI. EFFECTIVE DATE AND TERMINATION

- A.** The effective date of this Agreement is the date of the last signature below.
- B.** The Agreement will terminate three years from the date that the United States approves the PHIIP so long as the United States determines that ADPH has substantially complied with the terms of this Agreement and the PHIIP.

**For the Alabama Department of
Public Health**


Date: 4/17/2023

Scott Harris, M.D., M.P.H.
State Health Officer
Alabama Department of Public Health
201 Monroe Street, Suite 1552
Montgomery, AL 36104

For the United States

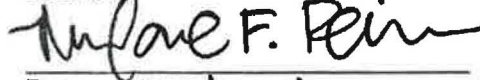
U.S. Department of Justice


Date: 5/3/23

Kristen Clarke
Assistant Attorney General
Civil Rights Division

Christine Stoneman, Chief
Daria Neal, Deputy Chief
Selin Cherian-Rivers, Attorney
Kaitlin Toyama, Attorney
Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

**U.S. Department of Health and Human
Services**


Date: 05/03/23

Melanie Fontes Rainer
Director
Office for Civil Rights

Pamela Barron, Deputy Director,
Civil Rights Division

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, DC 20201

Barbara Stampul, Regional Manager
Beatriz Romero-Escobar, Senior Investigator
Region IV (Southeast), Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

Appendix

ADPH's "Official Notice of Violation" for Ala. Code §§ 22-2-14, 22-26-1 et seq. as related to inadequate onsite wastewater systems will be revised to prominently include the following content:

- A.** The notice will warn and inform residents of the health consequences of exposure to raw sewage. The notice will describe steps that residents and others can take to prevent the spread of diseases and illnesses associated with exposure to raw sewage, and inform residents to immediately contact their healthcare provider if they believe they may be sick due to raw sewage exposure.
- B.** The notice will state that, where a resident or property owner does not have the means to install/repair an ADPH-permitted onsite wastewater system designed to function at the residence, they will not be fined or referred for prosecution if they take these steps to minimize public health nuisances related to inadequate onsite wastewater systems and to come into compliance with the Alabama sanitation-related statutes: (i) provide information to ADPH to identify their method of wastewater disposal in response to a survey or study, and/or (ii) take steps to participate in any ADPH programs for the installation of ADPH-approved onsite wastewater systems on the property and confine sewage discharge, if any, to the resident's/property owner's property.
- C.** The notice will provide information about available ADPH programs for installation of ADPH-approved onsite wastewater system onsite to all identified persons who do not have a lawful means of sewage disposal.
- D.** This notice will state the following or contain similar language, as determined appropriate by the United States, to inform Lowndes County residents of ADPH's moratorium for enforcement of the Alabama sanitation-related statutes:

*You are receiving this notice of noncompliance with the Public Health Laws of Alabama as related to the required installation/repair of an onsite wastewater system permitted by ADPH. Ala. Code 22-10-1; 22-2-14. Noncompliance can result in fines and referral for prosecution. **However**, if you (owner of the residence/property) do not have the means to install/repair an ADPH-permitted onsite wastewater system, you can take the following steps towards compliance with the public health laws of Alabama and requirements related to onsite wastewater systems:*

(i) provide information to ADPH to identify your method of wastewater disposal in response to a survey conducted on behalf of ADPH (for information on this survey see ADPH website at _____ or the ADPH letter sent to your residence; if you have not received notice of this survey, please contact _____ at (insert phone number), and/or

(ii) submit a program application for a residential onsite system under any program overseen by ADPH and confine sewage discharge, if any, to your property.

If you take these steps to install/repair an ADPH-permitted onsite wastewater system, ADPH will not issue a fine, fee, or refer you for prosecution under Ala. Code 22-10-1; 22-2-14; or other related Alabama law.

- E.** ADPH will submit the revised notice of violation to the United States for approval within 30 days of the effective date of this Agreement.
- F.** ADPH shall not use any information obtained or provided in connection with any Notice of Violation or otherwise to cite, fine, or refer any resident for prosecution of the public health laws of Alabama.

Exhibit 58



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ICYMI: On his Journey to Justice, EPA Administrator Michael S. Regan Toured Historically Marginalized Communities in the American South, Highlighted Benefits of Bipartisan Infrastructure Law

November 22, 2021

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON (Nov. 22, 2021) – In case you missed it, last week EPA Administrator Michael S. Regan embarked on a “Journey to Justice” tour, traveling throughout Mississippi, Louisiana, and Texas to spotlight longstanding environmental justice

concerns in historically marginalized communities and hear firsthand from residents dealing with the impacts of pollution. Throughout the tour, the Administrator highlighted the benefits of President Biden’s Bipartisan Infrastructure Law and the Build Back Better agenda, focusing on historic investments in water infrastructure, Superfund, Brownfields, and in air quality improvements that will lead to lasting public health protections in communities that need them most.

During the trip, Administrator Regan:

- visited Jackson, Mississippi to hear firsthand from residents and environmental justice advocates about the water infrastructure challenges facing the city, with stops at the OB Curtis Water Treatment Facility, Wilkins Elementary School and the historic Farish Street District,
- traveled to New Orleans, Louisiana for a roundtable discussion with the Deep South Center for Environmental Justice,
- met with residents in St. John the Baptist Parish and St. James Parish, where he toured neighborhoods dealing with the severe impacts of pollution,
- joined the residents of Gordon Plaza in New Orleans for a roundtable discussion and walking tour of the affordable housing development built on top of a toxic landfill,
- toured New Orleans’ Lower Ninth Ward, where he kayaked the Bayou Bienvenue and fished with residents at the Sankofa Wetland Park and Nature Trail,
- traveled to Mossville, Louisiana to speak with residents and see up close the impacts of pollution from local refineries,
- spoke with students, faculty, and staff at Texas Southern University’s Bullard Center in Houston,
- toured Houston’s Kashmere Gardens and Fifth Ward Communities,
- joined residents and activists for a tour of the Houston Ship Channel.

See photos from the Journey to Justice [HERE](https://www.flickr.com/photos/usepagov/albums) 

<<https://www.flickr.com/photos/usepagov/albums>>

Below are highlights from the Administrator’s Journey to Justice:

Jackson, Mississippi

On Monday, Administrator Regan was in Jackson, MS to highlight Jackson's longstanding water infrastructure problems [\[\]](https://www.wjtv.com/news/local-news/epa-administrator-visits-jackson-to-discuss-infrastructure-issues/) <<https://www.wjtv.com/news/local-news/epa-administrator-visits-jackson-to-discuss-infrastructure-issues/>> and discuss how the President's Bipartisan Infrastructure Law will provide resources to communities in need [\[\]](https://www.mississippifreepress.org/18129/epa-chief-visits-jackson-to-address-water-crisis-help-in-biden-infrastructure-deal/) <<https://www.mississippifreepress.org/18129/epa-chief-visits-jackson-to-address-water-crisis-help-in-biden-infrastructure-deal/>>. While in Jackson, the Administrator hosted a roundtable discussion on environmental justice with community leaders, toured the OB Curtis Water Treatment Facility [\[\]](https://www.wapt.com/article/epa-administrator-to-tour-jackson-water-plant/38252665/) <<https://www.wapt.com/article/epa-administrator-to-tour-jackson-water-plant/38252665/>>, visited Wilkins Elementary School and toured the Historic Farish Street District that has suffered from water infrastructure challenges for years.

ABC News highlighted the concerns at Wilkins Elementary School and sat down with the Administrator [\[\]](#):

While kicking off an environmental justice tour across the South on Nov. 15, Michael Regan, the Environmental Protection Agency (EPA) administrator, told ABC News that the Biden administration's Build Back Better agenda will ensure that federal funding will be distributed equitably in communities that need it most.

"This is a huge opportunity for this country. It's a huge opportunity for these environmental justice communities that have disproportionately been impacted for far too long," Regan said.

"I want to partner with local mayors, governors and elected officials to be sure that as we're allocating these precious resources, and that they go to projects that are ready to accept and benefit those who need them the most," Regan later added.

See more from the Administrator's stop in Jackson from ABC News [HERE \[\]](#).



Administrator Regan meets with students impacted by water infrastructure problems in Jackson, MS.

St. John the Baptist Parish and St. James Parish, Louisiana

On Tuesday, Administrator Regan kicked off the day with Dr. Beverly Wright and The Deep South Center for Environmental Justice [\[link\]](#)

https://www.nola.com/news/environment/article_80d32ecc-4721-11ec-b822-af55976629c6.html for a roundtable discussion with EJ advocates from Louisiana and the region. Later, he traveled to St. John the Baptist Parish and St. James Parish [\[link\]](#) to meet with residents and see firsthand [\[link\]](https://www.wwno.org/news/2021-11-19/louisianas-most-vulnerable-residents-share-their-stories-during-epas-journey-to-justice-tour) <https://www.wwno.org/news/2021-11-19/louisianas-most-vulnerable-residents-share-their-stories-during-epas-journey-to-justice-tour> the impacts of pollution from facilities in “Cancer Alley.”

From Oliver Laughland for The Guardian [\[link\]](#) <https://www.theguardian.com/us-news/2021/nov/17/michael-regan-epa-louisiana-cancer-alley-visit>:

Regan is the first EPA administrator to visit the town. After receiving his briefing inside the chapel and touring houses on the fenceline of the Denka plant, the administrator paused in the dappled shade of the afternoon.

“Let me be clear,” he told the Guardian. “I know that we have to rebuild trust. I know that this didn’t happen overnight and won’t be resolved overnight. So our commitment is to do better, leverage our enforcement, work with Congress to get the toughest laws in place that are adequate and protective. And to do this in concert with community members who have been advocating this for decades.”

Reserve was one stop on Regan’s “journey to justice” trip around the American south, visiting in-person some of the environmental justice flashpoints in a region plagued by pollution and infrastructure failures and grappling with the brunt of the climate crisis.

Read the full article on the Administrator’s visit in The Guardian [HERE](#) 

<https://www.theguardian.com/us-news/2021/nov/17/michael-regan-epa-louisiana-cancer-alley-visit>.



Administrator Regan speaks with St. James Parish residents about the impacts of pollution in the community.

New Orleans, Louisiana

On Wednesday, Administrator Regan returned to New Orleans, where he started the day meeting with residents in Gordon Plaza, an affordable housing development built on top of a toxic landfill.

WGNO joined the tour at Gordon Plaza [✍️ <https://wgno.com/news/local/gordon-plaza-residents-cautiously-optimistic-following-visit-from-epa-administrator/>](https://wgno.com/news/local/gordon-plaza-residents-cautiously-optimistic-following-visit-from-epa-administrator/):

The concerns of Gordon Plaza residents made their way to the White House, and Wednesday, United States Environmental Protection Agency Administrator Michael Regan toured the neighborhood, promising an end to environmental injustice.

“The President thought it was very important to put a face on this term ‘environmental injustice.’ It’s really easy to let the term roll off your lips and not know who or how people are being impacted. You have my commitment that the EPA will partner with you all to solve this problem and find solutions,” said Regan.

See the full story from WGNO HERE [✍️ <https://wgno.com/news/local/gordon-plaza-residents-cautiously-optimistic-following-visit-from-epa-administrator/>](https://wgno.com/news/local/gordon-plaza-residents-cautiously-optimistic-following-visit-from-epa-administrator/).

Later, the Administrator traveled to the Lower Ninth Ward, where he kayaked the Bayou Bienvenue and toured the Sankofa Wetland Park and Nature Trail, where he spent time fishing with residents and discussing their environmental concerns.





See more from the Administrator's stops in the Lower Ninth Ward [HERE](#) [↗](#)

<<https://twitter.com/epamichaelregan/status/1461103403128561664>>.

Mossville, Louisiana

On Thursday, Administrator Regan traveled west to Mossville, LA where he joined residents and community leaders for a tour [↗](https://www.kplctv.com/2021/11/19/us-epa-administrator-michael-regan-visits-mossville-journey-justice-tour/) <<https://www.kplctv.com/2021/11/19/us-epa-administrator-michael-regan-visits-mossville-journey-justice-tour/>> of sites dealing with the impacts of long-standing pollution and climate change. Administrator Regan discussed the concerns around air and drinking water quality and spoke with residents about their environmental priorities and solutions.

From coverage in The Advocate [↗](https://www.theadvocate.com/lake_charles/article_880d5144-48b7-11ec-b879-ff1730140962.html) <https://www.theadvocate.com/lake_charles/article_880d5144-48b7-11ec-b879-ff1730140962.html>:

"I can tell you, being on the ground here, seeing it for myself, talking with the community members, it's just startling that we got to this point," Regan said near the fence of the Sasol chemical complex after viewing an air monitoring unit that residents and activists say is inadequate.

"And the question really is at this point, for all of us as federal, state and local government officials: What are we going to do moving forward? We can examine how we got here and I think we should, but there needs to be a sense of urgency around a solution for how we move forward, and that's what I want to put in motion."

He added: "It's our responsibility to protect every person in this country, no matter the color of their skin, how much money they have in their pocket or their ZIP code."

Read the full article from The Advocate [HERE](#) 

<https://www.theadvocate.com/lake_charles/article_880d5144-48b7-11ec-b879-ff1730140962.html>.

Houston, Texas

Later on Thursday, Administrator Regan traveled to Houston, TX for a conversation with students, faculty and staff at Texas Southern University's Robert D. Bullard Center for Environmental and Climate Justice.



Administrator Regan and Dr. Robert Bullard pose for a photo at Texas Southern University, where the Bullard Center for Environmental and Climate Justice is located.

Administrator Regan continued the Journey to Justice tour in Houston on Friday, kicking off the day with an environmental justice roundtable discussion with Dr. Robert Bullard and local environmental justice advocates. Later, the Administrator and Dr. Bullard toured Kashmere Gardens and Fifth Ward Communities to speak with residents

about the historic and current impacts of pollution in their neighborhoods and discuss the resources available from the President’s Bipartisan Infrastructure Law and the Build Back Better agenda.

From the Texas Tribune [✉](https://www.texastribune.org/2021/11/19/texas-pollution-epa-regan-houston/) <<https://www.texastribune.org/2021/11/19/texas-pollution-epa-regan-houston/>>:

It’s the type of community — dominated by people of color and polluted for decades — that the nation’s new Environmental Protection Agency administrator, Michael Regan, has promised that President Joe Biden’s administration will prioritize for environmental cleanups, emissions enforcement and infrastructure investments.

Regan, who spoke with residents of Fifth Ward and other communities of color in the Houston region Friday as part of a tour of historically marginalized and polluted communities across the South, said the EPA will ensure that money from the recently passed Infrastructure Investment and Jobs Act and the Build Back Better Act, which was passed by the House of Representatives Friday, will flow to communities that need it most.

“There are so many things we need to do to rebuild trust,” he added. “It’s not rocket science, we just have to get to work.”

Read the full article from the Texas Tribune [HERE ✉](https://www.texastribune.org/2021/11/19/texas-pollution-epa-regan-houston/)

<<https://www.texastribune.org/2021/11/19/texas-pollution-epa-regan-houston/>>.


Later, Administrator Regan joined members of the Texas Environmental Justice Advocacy Services (TEJAS) for a tour of the Houston Ship Channel, where he met with residents and local leaders to discuss air and water pollution and the impact of nearby facilities on the community.

From the Houston Chronicle [✉](https://www.houstonchronicle.com/news/houston-texas/houston/article/systemic-racism-is-alive-and-well-epa-16634551.php) <<https://www.houstonchronicle.com/news/houston-texas/houston/article/systemic-racism-is-alive-and-well-epa-16634551.php>>:

Later that afternoon, Regan drove east to see the Houston Ship Channel, the busy waterway connecting the city with the Gulf of Mexico, from the vantage point of a Baytown park. He observed how much industry there was as they drove. A small group

later stood in the sun, sharing their experiences and perspectives. Activist Juan Parras thanked Regan for his visit and for acknowledging environmental justice issues that, he says, other officials kept on the backburner.

Said Parras: "It's about time."

Read the full article from the Houston Chronicle [HERE](#) 

<<https://www.houstonchronicle.com/news/houston-texas/houston/article/systemic-racism-is-alive-and-well-epa-16634551.php>>.

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LAST UPDATED ON NOVEMBER 9, 2022



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Exhibit 59



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights

Office of External Civil Rights Compliance

July 28, 2023

In Reply Refer to:

EPA Complaint No. 07RNO-23-R6

Elizabeth Livingston de Calderon, Senior Attorney

Mike Brown, Senior Attorney

Earthjustice

900 Camp Street, Suite 303

New Orleans, LA 70130

ecalderon@earthjustice.org

mlbrown@earthjustice.org

RE: Rejection of Administrative Complaint

Dear Ms. Calderon and Mr. Brown:

The U.S. Environmental Protection Agency ("EPA"), Office of Environmental Justice and External Civil Rights Compliance, Office of External Civil Rights Compliance ("OECRC") received your complaint involving the Louisiana Department of Environmental Quality ("LDEQ"), dated May 31, 2023. The complaint alleges discrimination based on race and national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7. Specifically, the complaint alleges LDEQ's use of Significant Impact Levels ("SILs") in its Clean Air Act ("CAA") Prevention of Significant Deterioration ("PSD") permitting program discriminates against communities in Louisiana on the basis of race in violation of Title VI of the Civil Rights Act of 1964; and that the latest examples of this practice are LDEQ's December 5, 2022 extension of the Formosa Plastics major source air permits' deadlines to commence construction, and its March 28, 2023 grant of the Commonwealth LNG major source air permits.

Pursuant to EPA's nondiscrimination regulation, OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.12 (b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors described above. However, if OECRC obtains information leading OECRC to conclude

E. Calderon, Counsel
M. Brown, Counsel

Page 2

that an investigation is unjustified for prudential reasons, OECRC may reject a complaint allegation.¹

After careful consideration, OECRC has determined that, although the complaint meets the four-factor jurisdictional test, an investigation is premature. OECRC's preliminary investigation revealed that Sierra Club, one of groups that filed the subject Title VI complaint, has filed several related petitions in federal and Louisiana state court challenging LDEQ's use of SILs in its PSD permitting program.² The petition regarding the Formosa Plastics air permit, which a Louisiana state district court granted, is now pending with a state court of appeals.³ Sierra Club also filed petitions for review of the Commonwealth permits with both the U.S. Court of Appeals for the 5th Circuit and Louisiana state district court.⁴ These lawsuits significantly overlap with the subject Title VI complaint. The petition for review filed with the LA state court contends that LDEQ's decision to issue the permits violates the CAA, Louisiana Environmental Quality Act, Louisiana air regulations, and article IX, section 1 of the Louisiana Constitution. Of particular note, the petition argues that the court should invalidate the permits because the permits will result in disproportionately high and adverse impacts on low-income communities of color.⁵

As we discussed by telephone on July 27, 2023, OECRC is rejecting this complaint because a decision in any of the referenced litigation could significantly affect the issues raised in the complaint.⁶

Separate and apart from its Title VI authorities, EPA is currently working with LDEQ to address modeled National Ambient Air Quality Standards violations with new and/or existing sources in the new source review PSD air permitting program. This may reduce the impacts of LDEQ's use of the SILs in its PSD permitting program.

EPA's nondiscrimination regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OECRC.

¹ *See* OECRC Case Resolution Manual (CRM), Section 1.8, pp. 11, available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf

² Complaint at 21-22; *RISE St. James, et al. v. LDEQ*, La. 19th JDC, Docket No. 694,029.

³ Complaint at note 79, Exhibit 28.

⁴ *Sierra Club v. LA Dep't of Env'tl Quality*, La. 19th JDC, Docket No. C731-515, filed April 27, 2023, available at https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/2023-04-27_Petition%20for%20Judicial%20Review_Final.pdf; *Sierra Club v. LA Dep't of Env'tl Quality*, Docket No. C731-515 (5th Cir.) (filed Apr. 27, 2023), available at <https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/04.27.23%20Petition%20for%20Review%20Commonwealth.pdf>

⁵ *Sierra Club v. LA Dep't of Env'tl Quality*, La. 19th JDC, Docket No. C731-515, filed April 27, 2023, at 13-14, 23, 28.

⁶ CRM Section 1.8, p. 11.

E. Calderon, Counsel
M. Brown, Counsel

Page 3

If you have any questions, please feel free to contact me by telephone at (202) 809-3297 or by email at hoang.anhthu@epa.gov.

Sincerely,

ANHTHU
HOANG

Digitally signed by
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Exhibit 60



August 25, 2023

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RE: Request for Investigation Under Title VI of the Civil Rights Act of Florida Forest Service Sugarcane Field Burn Authorization Practices

SUBMITTED VIA EMAIL

Dear Administrator Regan, Secretary Vilsack, Director Dorka, Associate Assistant Secretary Lake Scott, and Chief Stoneman,

Sierra Club's Stop the Burn-Go Green Campaign submits this complaint to respectfully request that, pursuant to Title VI of the Civil Rights Act ("Title VI"), and the regulations thereunder, the U.S. Environmental Protection Agency and the U.S. Department of Agriculture investigate whether the Florida Forest Service's practices authorizing sugarcane field burns when the wind is blowing toward predominantly Black communities, and denying requests for burn

authorizations when the wind is blowing toward largely white communities, fail to comply with the requirements for receipt of federal funding imposed by Title VI. The Florida Forest Service's administration of these agricultural burn authorizations subjects predominantly Black communities in Florida's sugar growing region to discriminatory effects by depriving them of protections from the impacts of smoke and ash afforded to largely white communities to the east.

Sierra Club further requests that the Civil Rights Division of the United States Department of Justice ("DOJ") play a coordinating and oversight role to ensure "the consistent and effective implementation of Title VI across the federal government."¹

I. Introduction

With regard to sugarcane field burn authorizations, the ongoing practices of the Florida Forest Service ("FFS") protect largely white communities in eastern Palm Beach County from ash and smoke impacts while failing to protect predominantly Black communities to the west, in parts of Florida's Everglades region ("Glades") in Palm Beach County, from those harms. As characterized by U.S. Census data, the communities of Belle Glade, Pahokee, and South Bay are predominantly Black (58–60%), with approximately 10–16% non-Hispanic/Latino white residents.² The eastern Palm Beach County cities, Wellington, Westlake, and Royal Palm Beach, are largely non-Hispanic/Latino white (40–55%), with approximately 11–28% Black residents.³

During the sugarcane harvesting season, which takes place from October through May, residents of these the Glades communities are forced to endure smoke and ash impacts as a result of sugarcane burning that is authorized by the FFS. As detailed below, residents shut their windows and stay indoors to avoid the smoke and ash, keep their children indoors, and report experiences of coughing, itchy eyes, and trouble breathing.⁴ Doctors and nurses have noted the influx of patients to hospitals and clinics complaining of breathing problems during the burning season, and an analysis of hospitalizations and emergency room visits for residents of Belle Glade showed a marked rise during the burn season.⁵

¹ DOJ, Title VI Legal Manual, at Section III (Updated Feb. 3, 2021) (hereinafter "DOJ Title VI Legal Manual"), available at: <https://www.justice.gov/crt/fcs/T6manual3#:~:text=Accordingly%2C%20DOJ%20is%20charged%20with%20ensuring%20the%20consistent%20and%20effective%20implementation%20of%20Title%20VI%20across%20the%20federal%20government>.

² See *infra* section IV. A. for detailed demographic information.

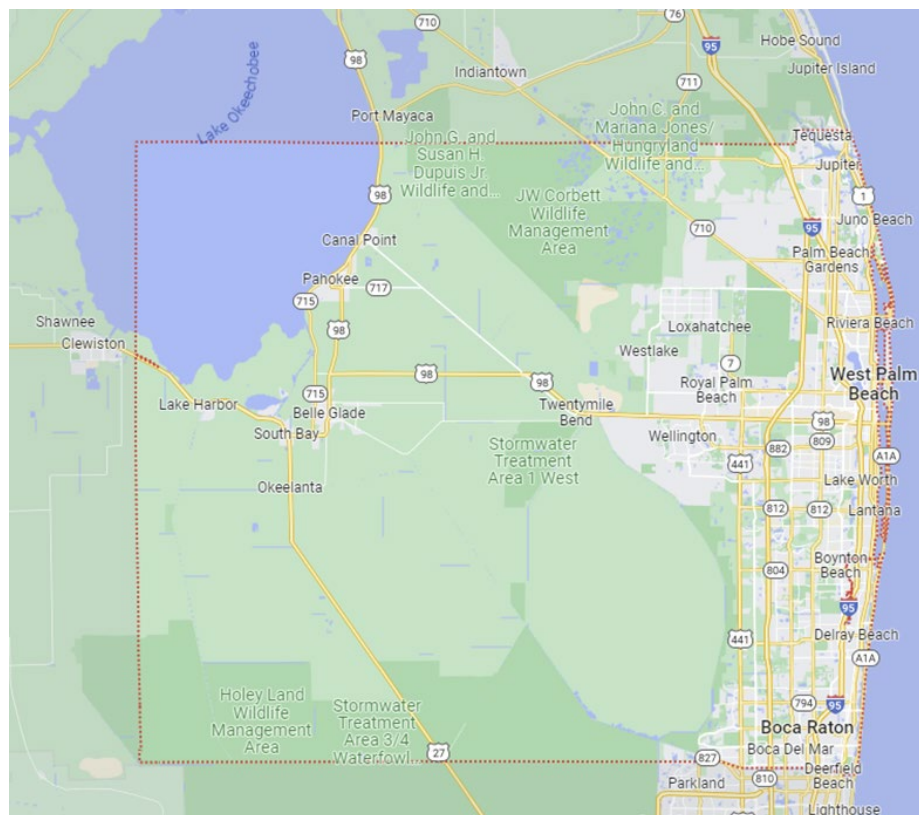
³ See *infra* section IV. A. for detailed demographic information.

⁴ See *infra* section III. A. for details.

⁵ See *infra* section III. A. for details.

In contrast, Palm Beach County communities to the east, such as Royal Palm Beach, Wellington, and Westlake, benefit from FFS practices and policies that stringently prohibit cane burning when the wind direction and speed would allow ash or smoke to reach those cities.

The figures below show the locations of the Glades communities and eastern cities in relation to Florida's "Sugar Growing Region" ("SGR"), past sugarcane field burn locations, and the boundaries of Palm Beach County.⁶



⁶ The top figures are reproduced from Holly K. Nowell et al., *Impacts of Sugarcane Fires on Air Quality and Public Health in South Florida*, 130 (8) *Environmental Health Perspectives* 087004-1, 087004-2 (Aug. 2022), available at: <https://ehp.niehs.nih.gov/doi/10.1289/EHP9957> (hereinafter "Nowell et al. (2022)"), and included in Attachment 1 – Key Studies. The map below them, depicting the boundary of Palm Beach County, is from Google Maps.

Florida Division of Forestry officials first initiated the practice of providing differential protection to the eastern communities in 1991, and FFS has continued to perpetuate this pattern of practices through the current sugarcane burning season, as FFS officials approve or deny requests for sugarcane field burn authorizations.⁷ In protecting largely white communities from smoke and ash while allowing predominantly Black communities to bear the environmental and health impacts of sugarcane burning, the FFS continues to implement a program that appears to be inconsistent with the requirements imposed on funding under Title VI, and should be investigated.

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” EPA and USDA’s implementing regulations prohibit recipients of federal funding from making decisions which have the purpose or effect of subjecting individuals to discrimination because of their race, color, or national origin.

The EPA and USDA provide funding to the Florida Department of Agriculture and Consumer Services, of which FFS is a division, including funds for forest management, and therefore have a responsibility to ensure that the FFS is not engaging in practices inconsistent with the requirements of Title VI. Moreover, federal environmental justice policy directs federal agencies to address environmental injustices to the fullest extent authorized by law.⁸ To fulfill their affirmative environmental justice obligations pursuant to Executive Order 12898, the EPA and USDA must work to remedy discrimination and “ensure the programs [they] fund[] consider disproportionately high adverse human health and environmental effects on minority and low income populations.”⁹

⁷ See *infra* sections III. B. and IV. A. for details.

⁸ Executive Order 12898: “Federal actions to address environmental justice in minority populations and low-income populations,” available at: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>; see Environmental Protection Agency, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (August 2022), available at: <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>.

⁹ *Id.*; U.S. EPA, Title VI and Environmental Justice, available at: <https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice>.

II. Parties

A. Complainant

Sierra Club is the nation's oldest grassroots organization. It is a not-for-profit corporation with approximately 34,260 members in Florida and 701,985 members nationwide and is dedicated to the protection and preservation of the environment. **Sierra Club's Stop the Burn-Go Green Campaign** is a grassroots campaign led by residents directly impacted by pre-harvest sugar field burning living in Palm Beach, Martin, and Glades counties. Stop the Burn-Go Green Campaign organizers have been advocating to end the injustice of pre-harvest sugarcane field burning since 2015. Their advocacy has shone a national spotlight on sugarcane burning and the environmental justice issues it raises. Stop the Burn-Go Green works with local leaders to urge both the sugar industry and regulators in the Florida Department of Agriculture and Consumer Services to phase-out pre-harvest field burning.

B. Federal Funding Recipient

The **FFS** is a division of the Florida Department of Agriculture and Consumer Services ("FDACS"). Its mission is to "protect and manage the forest resources of Florida, ensuring that they will be available for future generations."¹⁰ The FFS manages over 1 million acres of state forests for multiple public uses and administers Florida's outdoor burning and forest fire laws.¹¹ As described in more detail in section V.B below, EPA and USDA provide grant funds to FDACS, including funds related to forest management and forest program administration.

III. Factual Background

A. Florida's Sugar Growing Region ("SGR") and Pre-Harvest Cane Field Burning

Florida is the nation's largest producer of sugarcane.¹² Most of the commercial sugarcane industry in the state is located in South Florida, around the southern shore of Lake

¹⁰ Florida Department of Agriculture and Consumer Services, Florida Forest Service, <https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service> (last accessed Aug. 20, 2023).

¹¹ *Id.*; see *infra* section III. B.

¹² Florida Leads Nation in Production of Sugarcane, Fla. Farm Bureau (Dec. 10, 2018), <https://www.floridafarmbureau.org/news/florida-leads-nation-in-production-of-sugarcane> (last accessed Aug. 20, 2023).

Okeechobee.¹³ The SGR produces more than half of the nation's cane sugar and spans 440,000 acres (over 680 square miles) in the Everglades Agricultural Area (EAA) in South Florida.¹⁴ The cities of Belle Glade, South Bay, and Pahokee are in the SGR.¹⁵

Each year, about 10,000 sugarcane fields in the SGR are burned as part of the pre-harvest process for producing sugarcane.¹⁶ The burn season starts in October and ends in May. There are roughly 10,300 sugarcane fires in Florida annually, and 90% of those fires and associated emissions are concentrated in the SGR.¹⁷

For illustrative purposes, the satellite image below shows locations of burned sugarcane fields in the SGR (which appear as black and dark brown rectangles).¹⁸



These agricultural burns blanket communities with smoke, dust, and ash, often referred to as “black snow.”¹⁹ The burning of Florida sugarcane releases pollutants such as particulate

¹³ *Id.*

¹⁴ Lulu Ramadan, The Smoke Comes Every Year. Sugar Companies Say the Air Is Safe. The Palm Beach Post and ProPublica (July 2021), available at: <https://projects.propublica.org/black-snow/> (hereinafter “Black Snow Investigation”); Palm Beach County, Cooperative Extension – Agriculture, Sugar Cane, Rice and Sod, available at: <https://discover.pbcgov.org/coextension/agriculture/pages/sugarcane.aspx>.

¹⁵ Nowell et al. (2022), *supra* note 6, at 087004-1 (included in Attachment 1 – Key Studies.)

¹⁶ *Id.*

¹⁷ *Id.* at 087004-5.

¹⁸ Satellite image of SGR in January 2021, from: <https://earthobservatory.nasa.gov/images/147881/smoking-sugar-fields-in-south-florida> (last accessed Aug. 17, 2023).

¹⁹ Black Snow Investigation, *supra* note 14.

matter (PM), Polycyclic Aromatic Hydrocarbons (PAHs), Volatile Organic Compounds (VOCs), and carbonyls.²⁰ “Sugarcane fires and other biomass burning fires are sources of PM_{2.5}, which is linked to lung and other cancers, cardiopulmonary disease such as ischemic heart disease, and premature death.”²¹ “Chronic exposure to biomass burning, including sugarcane smoke, also has serious nonfatal consequences, including asthma, bronchitis, missed work and school days, and impacts on pregnancy and child development.”²² Researchers have estimated that sugarcane burning emissions for numerous PAHs and carbonyls are substantial relative to the total inventoried emissions for those pollutants tracked for Palm Beach County and for Florida as a whole, including for pollutants such as fluorene, benzo[b]fluoranthene, formaldehyde, and acetaldehyde.²³

A 2022 study estimated “that sugarcane burning is associated with 1–6 deaths per year across South Florida, including 1 death every few years specifically in the sugarcane growing region.”²⁴ “The authors estimated that burning of sugarcane fields in South Florida...produces almost as much PM_{2.5} in 6 months as all the state’s vehicles emit in 1 year.”²⁵

The American Lung Association does not support sugarcane burning due to the negative health and air impacts.²⁶ In June 2020, the Centers for Disease Control and Prevention recommended that regulators consider suspending agricultural burns during the pandemic.²⁷ (Sugar cane burns in Florida continued through that harvest season and subsequent ones without any apparent suspension.)²⁸

²⁰ Danielle Hall et al., *PAHs, carbonyls, VOCs and PM_{2.5} emission factors for pre-harvest burning of Florida sugarcane*, 55 *Atmospheric Environment* 164, 164–172 (2012), available at <https://doi.org/10.1016/j.atmosenv.2012.03.034> (hereinafter “Hall et al. (2012)”) (included in Attachment 1.)

²¹ Nowell et al. (2022), *supra* note 6, at 087004-1 (citing supporting studies).

²² *Id.* (citing studies). Nowell et al. (2022) also explained: “Biomass burning smoke is also linked to serious, nonfatal respiratory and cardiovascular morbidity, including asthma, bronchitis, pneumonia, and chronic obstructive pulmonary disease, as well as low birth weight and increased COVID-19 mortality.” *Id.* (citing studies).

²³ Hall et al. (2012), *supra* note 20, at 170, Table 6.

²⁴ See Oyelola Adegboye, *Field Burning Fallout: Quantifying PM_{2.5} Emissions from Sugarcane Fires*, 130(8) *Environmental Health Perspectives* 084003-1, 084003-1 available at <https://doi.org/10.1289/EHP11533> (discussing Nowell et al. (2022), *supra* note 6) (included in Attachment 1).

²⁵ *Id.* at 084003-2.

²⁶ Patrice Gaines, “In South Florida, ‘Black Snow’ Makes Breathing Difficult for Some Black and Latino Residents.” NBCNews.Com, May 10, 2023, www.nbcnews.com/news/nbcblk/sugar-burning-season-south-florida-rcna82479?fbclid=IwAR0r9VDFMhSGWgfonMgXJpCmGH9BGIFmZVC4Ah8Sfaa6bBINuw47HscPQxU.

²⁷ Gilda Di Carli, “Fire Drill - ‘They’re Killing People by Doing This’ -- Why Students at a School 40 Miles from Mar-a-Lago Can’t Go Outside.” *Grist* (Aug. 19, 2020) (last updated Oct. 2020), available at: <https://grist.org/justice/the-glades-florida-sugarcane-burn/> (hereinafter “Grist Investigation”).

²⁸ *See id.*

Residents of Belle Glade, South Bay, and Pahokee routinely face periods of extremely poor air quality conditions during the sugarcane burning season.²⁹ As part of an investigation, reporters who spoke with Glades residents, teachers, doctors, nurses, and field workers about their experiences with sugarcane burning found that “[m]any of these accounts paint a picture of a community often left with little choice but to stay indoors to avoid the smoke and ash outside.”³⁰ Parents keep their children home from school to avoid the risk of asthma attacks from increased exposure to the smoke, schools cancel outdoor recess, and residents keep inhalers and nebulizers on hand, stay indoors, and either keep windows closed or, when impossible due to the heat, put makeshift filters over windows to keep the smoke out.³¹ A teacher in Pahokee stated that “the conditions can be unbearable” and described checking on children whose parents “kept them at home because of their asthma and the smoke.”³² One resident described how, following an intense asthma attack, her doctor told her to leave the Glades if she ever wants her breathing to improve, but that she could not because— “I’m like most people here. We can’t leave.”³³ Nurses and doctors described to reporters how burning season “brings an influx of patients complaining of breathing problems to clinics and hospitals.”³⁴

Dr. Seneca Harberger, a clinician in Belle Glade, said patients often come into the clinic complaining that the smoke is aggravating their breathing problems: “Patients absolutely come probably on a daily basis and say their asthma, their COPD [chronic obstructive pulmonary disease] is made worse by the burning.”³⁵ The clinic regularly provides nebulizers to patients.³⁶

Dr. Jean Malecki, “who ran the county health department from 1991 to 2009 and started her career as a clinician in the Glades,” stated: “There was significant observational evidence that the burning of cane caused respiratory problems...I saw first-hand the problems that the people in Belle Glade were facing.”³⁷ She assigned a researcher to study health trends, and by 1992, that researcher concluded that more people were going to local clinics for respiratory

²⁹ Black Snow Investigation, *supra* note 14.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Ramadan, Lulu. “A Complete Failure of the State’: Authorities Didn’t Heed Researchers’ Calls to Study Health Effects of Burning Sugar Cane.” The Palm Beach Post and ProPublica (Mar. 2022), available at: <https://www.palmbeachpost.com/story/news/local/2021/08/19/sugar-cane-burning-researchers-called-black-snow-health-studies/7690883002/> (hereinafter “A Complete Failure of the State”).

³⁶ *Id.*

³⁷ *Id.*

problems during cane-burning season, but he lacked data on emissions to link the trend to pollution at that time.³⁸ (A 2016 study subsequently found that the levels of PAHs in Belle Glade were significantly higher—at times as much as tenfold—compared to a city in a cane-producing region of Brazil known for high levels of air pollution.³⁹ That study prompted researchers to recommend that FFS restrict the amount of burning allowed daily, but that recommendation was never adopted by FFS.⁴⁰)

More recently, a 2021 analysis based on eight years of hospitalization data found that for patients from Belle Glade, hospital and emergency room visits for respiratory illness rose by 35% during the sugarcane burning season.⁴¹

A 2021 project mapping wildfire smoke across the U.S. found that a handful of ZIP codes in Florida’s SGR recorded the worst smoke days in the U.S., and noted that these were areas where pre-harvest burning of sugarcane fields occurred.⁴²

A recent air quality monitoring project conducted by The Palm Beach Post and ProPublica using PurpleAir sensors captured repeated short-term spikes in pollution on days when the state authorized sugarcane burning and projected the smoke would blow toward them.⁴³ Although those spikes lasted less than an hour, “Sheryl Magzamen, a Colorado State University professor who studies the health impact of exposure to environmental toxins and reviewed the news organizations’ analysis, said the short bursts of PM_{2.5} recorded by the PurpleAir sensors in the Glades can have immediate health effects. ‘We’ve seen that spikes in air pollution, even short-term changes, had meaningful impacts on inhaler use, which we take to be signs of asthma and COPD [chronic obstructive pulmonary disease] exacerbation,’ she said,

³⁸ *Id.*

³⁹ *Id.* See also Nima Afshar-Mohajer, Christina Wilson, Chang-Yu Wu & James E. Stormer, *Source apportionment of atmospheric polycyclic aromatic hydrocarbons (PAHs) in Palm Beach County, Florida*, 66(4) *Journal of the Air & Waste Management Association* 377, 382–383 (2016) available at <https://doi.org/10.1080/10962247.2016.1138902> (“In comparison to the atmospheric PAH concentrations measured in a medium-sized city and one of the major sugarcane producers in the world, Araraquara City, São Paulo, Brazil ... the mean concentrations of all PAH compounds were significantly higher (1 to 10 times) at Belle Glade City.”) (hereinafter “Afshar-Mohajer et al. (2016)”) (included in Attachment 1.)

⁴⁰ *Id.* See also Afshar-Mohajer et al. (2016) at 377 (“Results from this study encourage more control for sugarcane burns and help to better manage authorization of the sugarcane burning incidents...”); 382 (suggesting that in light of its findings, “fewer authorized burnings for this period warrant consideration” by FFS and other management authorities); *id.* at 385 (“This study suggests a more refined biomass burning authorization plan to reduce the impact of PAH emissions on the residential areas of West Palm Beach County.”).

⁴¹ A Complete Failure of the State, *supra* note 35.

⁴² Alison Saldanha, *Dangerous Air: We Mapped the Rise in Wildfire Smoke Across America. Here’s How We Did It* (September 28, 2021), <https://insideclimatenews.org/news/28092021/dangerous-air-data-map/?fbclid=IwAR2vKsPflZOHkRqcV75w5lVDwRRsdYTQykn39fc2kjOq7CpdRArl59YXR2Q>.

⁴³ Black Snow Investigation, *supra* note 14.

referring to her past research.”⁴⁴ The Post and ProPublica used automated text messaging to 51 residents across the region to elicit responses in the moments after the sensors picked up spikes in air pollution; the responses from residents described coughing, itchy eyes, and “trouble breathing.”⁴⁵ Health and air-quality researchers said that some of the symptoms residents described aligned with elevated exposure to PM_{2.5}.⁴⁶ Dr. Mark Frampton, a pulmonologist at the University of Rochester who formerly served on the EPA’s Clean Air Scientific Advisory Committee, stated, “I’m not surprised that there would be effects even with shorter-term exposure, especially if the exposures are repeated and recurrent...If you have asthma, that can trigger immediate effects. It doesn’t have to be around for very long at all.”⁴⁷

B. The Florida Forest Service’s Burn Authorization Practices

Florida law vests the Florida Forest Service (“FFS”) with “powers, authority, and duties” that include authority to authorize agricultural burning. Fla. Stat. Ann. § 590.02(1)(i), (10)(a); *id.* § 590.015(1). Regulations state that FFS will set special requirements for all types of burn authorizations “to protect public health and safety.” Fla. Admin. Code Ann. r. 5I-2.006(1).⁴⁸ Such requirements may include “restricting wind direction” and limiting the duration of the burning. *Id.* Burning is prohibited whenever FFS “determines that the fire poses a threat to health, safety, and property protection.” Fla. Admin. Code Ann. r. 5I-2.004(h). Burning is also prohibited “when the [FFS] determines that atmospheric or meteorological conditions indicate improper dispersion of smoke that threatens public health, safety, or general welfare; or which would obscure visibility of vehicular or air traffic[.]” Fla. Admin. Code Ann. r. 5I-2.004(i).⁴⁹ FFS is also authorized to designate areas where burning is restricted to daytime hours only.⁵⁰

All planned fires in Florida require an Open Burn Authorization (“OBA”).⁵¹ Before each burn, “burners”—people who are certified with the state of Florida to conduct such burns—must

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Fla. Admin. Code Ann. r. 5I-2.006.

⁴⁹ Fla. Admin. Code Ann. r. 5I-2.004.

⁵⁰ “Smoke Sensitive Areas” are areas designated by the Florida Forest Service within which, for reasons of visibility, health or human welfare, smoke could unduly adversely impact public safety e.g., interstates, urban areas, airports, and hospitals. Fla. Admin. Code Ann. r. 5I-2.003(30). In “smoke sensitive areas,” burning is prohibited “between one hour before sunset and 9:00 a.m. the next day. Fla. Admin. Code Ann. r. 5I-2.004(g).

⁵¹ Florida Statute 590.125(3)(b)(4).

use an online portal to enter information about the burn, indicate the burn location on a map, generate the projected smoke plume for the burn on a map, and then submit the request.⁵² The FFS staff then reviews the requests and approves or denies them.⁵³

FFS officials' decision-making process for approving or denying each individual burn application is opaque—records of denials are only available through public records requests, and even in those records, officials seldom articulate a clear explanation for the denial.⁵⁴

In 2019, a document titled “Florida Forest Service, *Procedures for Burning Sugarcane* (Sept. 30, 2019)” was filed as an exhibit in *Coffie v. Florida Crystals Corporation*, Case No. 19-80730-CIV-Smith (S.D. Florida); in that document, FFS seemingly memorialized its then-current internal policies or practices for deciding whether to approve requests for burn authorizations.⁵⁵

That document described FFS's practices of denying authorization for sugarcane burning in the region affecting cities such as Royal Palm Beach and Wellington whenever wind conditions would disperse smoke eastward, toward those communities. Specifically, that document shows that in the area designated as “Zone I,” no cane burning would be allowed if surface or transport winds came from the NNW, NW, W, SW, or SSW—in short, any direction that would send smoke eastwards. And for burning within “Zone II” areas (the zone immediately west of Zone I), burning would require special authorization for winds from the NW, W, or SW, and be prohibited if such winds were at speeds over 9 miles per hour—again, apparently prohibiting burns under those wind conditions where the plumes could reach those eastern communities in Zone I. Similarly, for Zone III areas (the zone immediately west of Zone II), special authorization would be required for Zone III South for winds from the NW, W, or SW if wind speeds exceeded 12 miles per hour, and for Zone III North for winds from the W or NW above that speed—again, apparently restricting burns under wind conditions where the plumes could reach eastern communities.

⁵² Web-Based Open Burn Authorization Request (WebOBA), Florida Forest Service, available at: <https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire/Resources/Fire-Tools-and-Downloads/Web-Based-Open-Burn-Authorization-Request-WebOBA>.

⁵³ *Id.*

⁵⁴ See Attachment 2 – FFS Spreadsheets Showing Burn Authorization Denials from October 2022 through May 2023.

⁵⁵ See 2019 WL 8503588 (S.D.Fla.); Attachment 3 – 2019 Description of FFS Burn Authorization Practices (*Coffie v. Florida Crystals Corporation*, 9:19-cv-80730-RS, ECF Docket No. 81-2, “Exhibit B” (filed Oct. 18, 2019)) (obtained from pacer.gov).

In 2020, Sierra Club organizer Patrick Ferguson filed a records request under Florida state law to the Florida Department of Agriculture and Consumer Services seeking information about modifications to those internal practices or policies; on January 7, 2021, the agency provided a new map of the “zones” and a description of the policies for each zone.⁵⁶

Although the boundaries for the zones had been reconfigured, the documents showed the FFS continuing its practice of denying authorizations for burning when the wind direction and speed could result in smoke or ash plumes reaching the eastern communities of Wellington and Royal Palm Beach. In all zones, burns are prohibited when dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater, and backing fires are required if dispersion indices range from 21-25, but, critically, each zone has different restrictions and/or prohibitions on sugarcane burning based on wind speed and direction. As shown in the attached figure from those documents,⁵⁷ Zone I (referred to as Zone 1 on FFS’s map of the zones) lies outside of the SGR to the east. It has the most stringent burn restrictions—sugarcane burns in Zone I are prohibited entirely whenever the wind blows toward the east, at any speed.⁵⁸

Zone II spans the easternmost portion of the SGR, and is divided into a north area and a south area. Zone II North encompasses much of the area that lies between the three Glades cities and the eastern cities. In Zone II North (labeled “Zone 2N” on the FFS map), burns are prohibited when the wind blows in most eastward directions and the wind speed is greater than 10 miles per hour.⁵⁹ In Zone II South (“Zone 2S”), burns are prohibited when the wind blows in eastward directions and the wind speed is greater than 12 miles per hour.⁶⁰

⁵⁶ Attachment 4 – 2020/2021 Description of FFS Burn Authorization Practices.

⁵⁷ *See id.*

⁵⁸ *See id.*

⁵⁹ The Zone II North guidelines allow burns when the wind blows to the North Northeast. *Id.*

⁶⁰ The Zone II South guidelines also prohibit burns when the wind blows toward the Northwest and North Northwest and the wind speed is greater than 12 miles per hour. *Id.*

ZONE II NORTH AREA

CANE BURNING ALLOWED WITH WINDS FROM:		IF SURFACE OR TRANSPORT WINDS FROM:	
North	N	Southwest	SW
Northeast	NE	West	W
East	E	Northwest	NW
Southeast	SE	North Northwest	NNW
South	S	West Northwest	WNW
South Southwest	SSW	West Southwest	WSW
East Northeast	ENE	Cane burning allowed if winds are less than 10 miles per hour and only backing fires allowed.	
East Southeast	ESE		
North Northeast	NNE		
South Southeast	SSE		
Backing Fire must be used if dispersion indices range from 21-25.			
NO BURNING allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.			

ZONE II SOUTH AREA

CANE BURNING ALLOWED WITH WINDS FROM:		IF SURFACE OR TRANSPORT WINDS FROM:	
North	N	Southwest	SW
Northeast	NE	West	W
East	E	Northwest	NW
South	S	South Southwest	SSW
East Northeast	ENE	North Northwest	NNW
East Southeast	ESE	West Southwest	WSW
North Northeast	NNE	West Northwest	WNW
Backing Fire must be used if dispersion indices range from 21-25.		Southeast	SE
NO BURNING allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.		South Southeast	SSE
		Cane burning allowed if winds are less than 12 miles per hour and only backing fires allowed.	

In Zones III through VI, there are no burn prohibitions based on wind direction or speed.⁶¹ Zone III encompasses the most southern part of the SGR, and there are no wind direction or wind speed restrictions.⁶²

ZONE III

NO WIND DIRECTION OR WIND SPEED RESTRICTIONS	
Backing Fire must be used if dispersion indices range from 21-25.	
NO BURNING allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.	

⁶¹ *Id.*

⁶² *Id.*

Zones IV and V are in the center of the SGR, and contain the cities of Belle Glade, Pahokee, and South Bay.⁶³ There are only very limited restrictions in these zones: in Zone IV, a backing fire may be required based on wind speed and direction, and in Zone V, a backing fire may be required based on wind speed alone.⁶⁴

ZONE IV

CANE BURNING ALLOWED WITH WINDS FROM:		IF SURFACE OR TRANSPORT WINDS FROM:	
North	N	Southwest	SW
Northeast	NE	East Southeast	ESE
Northwest	NW	South	S
East	E	Southeast	SE
West	W	South Southeast	SSE
North Northeast	NNE	South Southwest	SSW
North Northwest	NNW	West Southwest	WSW
East Northeast	ENE		
West Northwest	WNW		
Backing Fire must be used if dispersion indices range from 21-25.		If winds are 12 miles per hour or greater, then a backing fire must be used.	
<u>NO BURNING</u> allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.			

ZONE V

BURNING ALLOWED WITH ANY WIND DIRECTION. WIND SPEEDS GREATER THAN 15 MILES PER HOUR REQUIRES USE OF BACKING FIRE.
Backing Fire must be used if dispersion indices ranger from 21-25.
<u>NO BURNING</u> allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.

Zone VI encompasses the northern part of the SGR, and there are no wind direction or wind speed restrictions.⁶⁵

ZONE VI

NO WIND DIRECTION OR WIND SPEED RESTRICTIONS
Backing Fire must be used if dispersion indices range from 21-25.
<u>NO BURNING</u> allowed if dispersion indices are 20 or below or when the Air Quality Index is forecasted to be 101 or greater.

⁶³ See Attachment 4 – 2020/2021 Description of FFS Burn Authorization Practices.

⁶⁴ *Id.*

⁶⁵ *Id.*

The FFS practices of providing stringent protection from smoke and ash plumes only to eastern communities originated in 1991, when the Florida Department of Agriculture’s Division of Forestry developed new policies in response to complaints from those eastern communities.⁶⁶ Prior to that time, the Division of Forestry issued blanket permits to sugar growers for entire seasons that imposed recording and reporting requirements, rather than limitations on the burns.⁶⁷ But complaints from the urban coastal population increased as development in those areas spread westward, closer to agricultural areas.⁶⁸ In response to receiving 40 to 50 such complaints in 1990-1991, and additional complaints sent via the Governor’s Office and to U.S. Senator Bob Graham, Forestry officials were spurred to act and developed new policies unveiled in October of 1991.⁶⁹ These complaints came from residents from eastern communities such as Wellington and Royal Palm Beach, who complained of sore throats, coughing, and breathing problems when the wind brought smoke from sugar cane burns their way.⁷⁰ According to census data, in 1990 approximately 89.3% of the population in Wellington was white (not of Hispanic origin), and 83.5% of the population of Royal Palm Beach village was white (not of Hispanic origin).⁷¹ In contrast, the population of Belle Glade city in 1990 was approximately 58% Black, 31.4% “white of Hispanic origin,” and 10.2% white (not of Hispanic origin), and Belle Glade camp was about 98% Black.⁷² Pahokee city was about 55% Black, 24.5% white (not of Hispanic origin), and 35% “white of Hispanic origin.”⁷³ South Bay “city” was 61.9% Black, 8.3% “white (not of Hispanic origin),” and 22% “white of Hispanic origin.”⁷⁴

⁶⁶ Belinda Brockman, *West Winds Will Activate Burning Ban New Rules for Cane Growers*, Palm Beach Post (Oct. 11, 1991), 1991 WLNR 1260652 (West Law Access Number).

⁶⁷ Lucy Morgan, *Burned Up: Sugar Cane Fight Peaks*, St. Petersburg Times (Nov. 4, 1991), 1991 WLNR 1960426 (West Law Access Number).

⁶⁸ Belinda Brockman, Mary McLachlin, and Lisa Shuchman, *Cane Burning Curbed to Reduce Ash, Soot in the Skies*, Palm Beach Post (Oct. 8, 1991), 1991 WLNR 1223536 (West Law Access Number).

⁶⁹ *Id.*

⁷⁰ Black Snow Investigation, *supra* note 14; Antigone Barton and Hannah Morse, *Glades residents left behind: Nikki Fried’s ‘changes’ to cane burning served only Big Sugar*, Palm Beach Post (Aug. 11, 2022), <https://www.palmbeachpost.com/in-depth/news/local/2022/08/11/cane-burning-nikki-frieds-historic-changes-served-only-big-sugar/10030576002/>.

⁷¹ U.S. Department of Commerce, 1990 Census of Population General Population Characteristics Florida, Section 1, (1990- CP-1-11), Table 6 at 80, 91, available at <https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-11-1.pdf>.

⁷² *Id.* Table 6 at 33.

⁷³ *Id.* Table 6 at 73.

⁷⁴ *Id.* Table 6 at 84.

In response to the complaints from the eastern communities, the 1991 Forestry Division policies restricted burning when the wind was coming from the west, except for burning in areas nearest to Lake Okeechobee, with the most stringent restrictions on fires in areas closest to the east coast.⁷⁵ In 1991, a Florida Department of Agriculture official stated that the new wind-direction based policies to protect eastern communities were put in place “to eliminate the potential problems for people having to breathe the ash and deal with stuff falling on their cars and in their swimming pools.”⁷⁶

In the wake of the new policies protecting eastern communities, state regulators continued to receive complaints about the impact of ash and smoke from cane field burns. Yet these complaints did not result in action to provide residents of the Glades with the same stringent protections provided to largely white eastern communities. In 1992, Department of Agriculture/Forestry officials purportedly still received 18 complaints during the cane burning season.⁷⁷

In the years following a 2009 study of air quality, residents from sugar-producing counties in Florida complained about the impacts from burns dozens of times, some describing nauseating smells, itchy eyes, or chest tightness, others complaining of the soot coating their homes.⁷⁸ The local health department routinely forwarded these complaints, including the health complaints, to the FFS, but FFS staff closed the complaints on the grounds that the burns had been authorized, or that the smoke had since dissipated.⁷⁹

In addition, local organizers have met with FFS leadership to urge them to change the sugarcane burn program; hosted rallies and educational webinars to mobilize community members; and raised awareness about the severe impacts of sugarcane burning.⁸⁰ Most recently, Stop The Burn-Go Green Campaign advocates led a rally outside Florida Crystals corporate headquarters to protest the start of the 2022–23 harvest season on October 1, 2022.⁸¹ Despite

⁷⁵ Belinda Brockman, *West Winds Will Activate Burning Ban New Rules for Cane Growers*, Palm Beach Post (Oct. 11, 1991), 1991 WLNR 1260652 (West Law Access Number).

⁷⁶ Black Snow Investigation, *supra* note 14.

⁷⁷ *Cooperate, Don't Litigate*, Palm Beach Post (Apr. 6, 1992), 1992 WLNR 1353103 (Westlaw Access Number).

⁷⁸ A Complete Failure of the State, *supra* note 35.

⁷⁹ *Id.*

⁸⁰ Stop the Burn, “Our Campaign: Speaking Truth to Power,” available at: <https://stopsugarburning.org/stop-the-burn/#speakingtruth>.

⁸¹ Chris Persaud, ‘Get off our lungs!’: 60 rally against sugar-cane burning in Glades, Palm Beach Post (Oct. 1, 2022), <https://www.palmbeachpost.com/story/news/2022/10/01/glades-residents-rally-against-sugar-cane-burning-harvest/8152806001/>.

years of community advocacy, the FFS has not taken any action to meaningfully change its sugarcane burn authorization practices.

In 2019, and again in 2020, then Florida Department of Agriculture and Consumer Services (FDACS) Commissioner Nikki Fried announced changes to its implementation of the sugarcane field burn authorization practices, which the FFS claimed would minimize the harmful impacts from sugar burning.⁸² However, as detailed above the changes did not prohibit burns when the wind blows toward predominantly Black communities in the sugar growing region, and residents say the changes “did little to alleviate the impact of the smoke reaching the neighborhoods.”⁸³ Some of the changes “reworded” existing requirements “with minor adjustments, and none had binding authority.”⁸⁴ Fried announced that sugarcane growers would need a two-field buffer zone from wildlands when burning on dry, windy days; would not be permitted to burn on foggy mornings or at night without permission; and would have less time to contain underground muck fires.⁸⁵ But, as discussed above, the records released to Sierra Club in 2021 documenting FFS’s current practices show that these minor changes did not alter the fundamental FFS practice of stringently protecting largely white eastern communities in Palm Beach County from smoke and ash plumes while failing to protect predominantly Black communities in Palm Beach County from the impacts of smoke and ash due to cane field burns.

C. Impacts on Communities in the SGR from Pre-Harvest Cane Field Burning Are Avoidable

Green harvesting is a practical and safe alternative to pre-harvest cane field burning. Most major sugar-producing countries outside of the United States, including India, Brazil, and Thailand, have banned or significantly restricted the burning of sugar fields due to the negative public health impacts.⁸⁶ Instead of burning the sugarcane fields, growers use a mechanical harvesting process known as “green harvesting,” which harvests the stalks with their leaves and

⁸² Black Snow Investigation, *supra* note 14.

⁸³ *Id.*

⁸⁴ Antigone Barton and Hannah Morse, *Glades residents left behind: Nikki Fried’s ‘changes’ to cane burning served only Big Sugar*, Palm Beach Post (Aug. 11, 2022), <https://www.palmbeachpost.com/in-depth/news/local/2022/08/11/cane-burning-nikki-frieds-historic-changes-served-only-big-sugar/10030576002/>.

⁸⁵ Forrest Saunders, “Florida AG Commissioner Changes Rules for Prescribed Burns, Targets Sugarcane Growers.” ABC Action News Tampa Bay (WFTS), ABC Action News Tampa Bay (WFTS) (Oct. 2019), available at: <https://www.abcactionnews.com/news/state/florida-ag-commissioner-changes-rules-for-prescribed-burns-targets-sugarcane-growers>.

⁸⁶ Black Snow Investigation, *supra* note 14.

tops intact, thereby avoiding the negative public health consequences associated with pre-harvest burning.⁸⁷ Where green harvesting is practiced, sugarcane “trash” is either left on the soil to be used as mulch, or is separated and collected to be utilized along with bagasse (the waste product left over after sugarcane refining) to produce electricity, biofuels, biochar, tree-free paper products, cattle feed, and more.⁸⁸ A 2017 study found no statistically significant differences in pre-harvest burned versus green harvested sugarcane with regard to final sugarcane yield, sucrose concentration, and sugar yield for study areas in Florida.⁸⁹

A sugar field burning in the SGR.⁹⁰



Green harvesting of a sugar field.⁹¹



⁸⁷ *Id.*

⁸⁸ See, e.g., R.G. Quirk, et al., *Utilization of Biochar in Sugarcane and Sugar-Industry Management*, 12(4) Sugar Tech 321, 321 (2012) (“The thermal conversion, via a slow pyrolysis process, of cane residues such as green harvest trash and bagasse can produce thermal or electrical energy as well as biochar.”); José Goldemberg, et al., *The sustainability of ethanol production from sugarcane*, 36 Energy Policy 2086, 2086-2097 (2008); Thomas J. Rainey and Geoff Covey, (2016). *Pulp and paper production from sugarcane bagasse*. In *Sugarcane-Based Biofuels and Bioproducts* (eds I.M. O'Hara and S.G. Mundree). <https://doi.org/10.1002/9781118719862.ch10>; A. Egeskog,, et al., *Integrating bioenergy and food production—A case study of combined ethanol and dairy production in Pontal, Brazil*, 15(1) Energy for Sustainable Development 8, 8-16 (2011) <https://doi.org/10.1016/j.esd.2011.01.005>.

⁸⁹ Hardev S. Sandhu, et al., *Harvest management effects on sugarcane growth, yield and nutrient cycling in Florida and Costa Rica*, 214 Field Crops Research 253, 253 (2017), available at <http://dx.doi.org/10.1016/j.fcr.2017.09.002>.

⁹⁰ Image from Pro Publica’s Black Snow Investigation, *supra* note 14.

⁹¹ Image from Stop the Burn’s website, <https://stopsugarburning.org/green-harvesting-solution/#harvesting>.

IV. Florida Forest Service’s Practices and Policies for Authorization of Sugarcane Field Burns Subject Predominantly Black Communities to Smoke and Ash While Protecting Largely White Communities from Such Impacts

The FFS’s practice of authorizing sugarcane burns when the wind will blow smoke and ash in the direction of the Glades communities and denying burn requests when the wind would blow the same pollution toward largely white eastern communities has apparent discriminatory effects. EPA and USDA, as federal agencies providing funding to FDACS, should engage in a cumulative assessment of the evidence to determine whether FFS’s practices are inconsistent with requirements on funding imposed under Title VI and its implementing regulations.

A. Florida Forest Service’s Actions Have Discriminatory Effects on Predominantly Black Communities

The FFS’s sugarcane burn authorization decisions have a disproportionate and discriminatory effect on predominantly Black communities in Palm Beach County. Discriminatory effects that disproportionately burden people of a particular race are often “probative of why the action was taken in the first place.”⁹² FFS policies and practices result in FFS denying burn authorizations when the negative impacts of the burns would be imposed on largely white communities in eastern Palm Beach County.⁹³ As a result, smoke from sugarcane burns rarely reaches those communities.⁹⁴ In contrast, the FFS routinely authorizes burns when the impacts from smoke plumes will fall upon predominantly Black communities. Moreover, as detailed below, burns that are denied authorization by FFS when the wind is blowing toward the eastern communities are subsequently approved by FFS at the same location when the wind is blowing the plume of smoke or ash toward South Bay, Pahokee, or Belle Glade. Thus, in selectively protecting the largely white eastern communities in Palm Beach County, FFS practices have the effect of shifting additional impacts to the predominantly Black communities to the west.

The charts below summarize the current racial and ethnic composition of the populations in the eastern cities, which receive stringent protections from smoke and ash impacts, compared to cities in the adjacent portion of the SGR in the same county (Palm Beach County), where residents routinely are subjected to those harms.

⁹² *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 487 (1997).

⁹³ See Attachment 4 – 2020/2021 Description of FFS Burn Authorization Practices.

⁹⁴ Black Snow Investigation, *supra* note 14.

Demographic Information from Census.gov⁹⁵

Ethnicity and Race	Western Cities (Glades communities)			Eastern Cities (Coastal communities)		
	Belle Glade	Pahokee	South Bay	Wellington	Westlake	Royal Palm Beach
“Black or African American”	60.2%	57.9%	57.8%	11.1%	17.3%	28.0%
“Hispanic or Latino”	29.9%	28.7%	22.6%	27.9%	35.7%	24.7%
“White...not Hispanic or Latino”	10.2%	12.9%	15.8%	55.5%	40.1%	42.1%

⁹⁵ Population estimates by race/ethnicity for Belle Glade, Pahokee, Wellington, Royal Palm Beach from <https://www.census.gov/quickfacts> (last accessed Aug. 2, 2023); Census information for South Bay from 2021: ACS 5-year Estimates Detailed Tables, at <https://data.census.gov/table?q=South+Bay+city,+Florida&g=160XX00US1276417&tid=ACSDT5Y2021.B03002> (last accessed Aug. 3, 2023); Census information for Westlake from 2021: ACS 5-year Estimates Detailed Tables, at <https://data.census.gov/table?q=Westlake+city,+Florida&g=160XX00US1276417&tid=ACSDT5Y2021.B03002> (last accessed Aug. 4, 2023).

Demographic Information from EPA’s EJScreen Reports⁹⁶

Ethnicity/Race	Palm Beach County	Western Cities (Glades communities)			Eastern Cities (Coastal communities)		
		Belle Glade	Pahokee	South Bay	Wellington	Westlake	Royal Palm Beach
“Black”	19%	62%	58%	55%	11%	17%	28%
“Hispanic” ⁹⁷	23%	27%	27%	25%	28%	36%	24%
“White”	65%	26%	24%	33%	70%	51%	57%
“People of Color”	47%	90%	86%	83%	45%	60%	58%

As shown in the tables above, Belle Glade, Pahokee, and South Bay are communities where the majority of the population is Black, and people of color comprise over 80% of the population, whereas in Wellington, Westlake, and Royal Palm Beach, over 40% of the population is described as “white... not Hispanic or Latino,” according to census data. The three Glades communities are predominantly Black (58–60%), with approximately 10–16% non-Hispanic or Latino white residents.⁹⁸ The eastern cities are largely non-Hispanic or Latino white (40–55%), with approximately 11–28% Black residents.⁹⁹

⁹⁶ The data in this chart is from the EJScreen Community Reports for Palm Beach County, Belle Glade, Pahokee, South Bay, Wellington, Westlake, and Royal Palm Beach. United States Environmental Protection Agency, 2023 version, EJScreen Community Reports, available at: <https://ejscreen.epa.gov/mapper> (last accessed Aug. 2, 2023 or 3, 2023, as shown on each report) [See Attachment 5 – EJScreen Reports]. All demographic indicators in EJScreen Community Reports are from Census Bureau’s ACS 2017-2021 5-year Summary (ACS 2021). U.S. Environmental Protection Agency, EJScreen: Environmental Justice Screening and Mapping Tool, EJScreen Change Log, available at: <https://www.epa.gov/ejscreen/ejscreen-change-log#juneinterface>, (last accessed Aug. 3, 2023).

⁹⁷ According to the EPA EJScreen Reports, “Hispanic population can be of any race.” See Attachment 5 – EJScreen Reports.

⁹⁸ See table above, “Demographic Information from Census.gov.”

⁹⁹ *Id.*

The figure below illustrates how FFS policies and practices related to wind direction and speed, as memorialized by FFS in 2020, selectively protect Wellington, Westlake, and Royal Palm Beach while failing to provide equivalent protection to Belle Glade, Pahokee, and South Bay.

Illustration of Impact of FFS Practices for Each Zone on Communities¹⁰⁰



The red arrows in the figure above show the wind directions for which burns are prohibited based on wind direction or wind direction and speed in the zones where those prohibitions apply. The purple lines show the approximate boundaries of the zones described in records released by FFS.¹⁰¹ In Zone 1, which includes the most eastern edge of the sugar growing region, and encompasses the eastern cities, sugarcane burns are prohibited when the wind is blowing toward Westlake, Royal Palm Beach, or Wellington (the “eastern cities”). In Zone 2N, which encompasses a large portion of the sugar growing region lying between the cities of Pahokee, Belle Glade, and South Bay, and the cities of Westlake, Royal Palm Beach, or Wellington, sugar burns are prohibited when the wind direction is blowing toward the eastern

¹⁰⁰ This illustration was created by superimposing the approximate boundaries for the zones shown in FFS’s zone map (thick purple lines), *see* Attachment 4, onto a map generated by Google Maps, adding the approximate boundary of the SGR identified in Nowell et al. 2022 (dashed black lines), highlighting the communities of South Bay, Belle Glade, and Pahokee in red, and adding clusters of arrows to depict FFS burn denial practices based on wind direction, described in Attachment 4.

¹⁰¹ *See* Attachment 4.

cities and the wind speed is equal to or greater than 10 miles per hour, but are not similarly prohibited for the wind directions toward Pahokee, Belle Glade, or South Bay.

Zones 4 and 5, which encompass Pahokee, Belle Glade, and South Bay, do not have analogous restrictions to prohibit burns when the smoke or ash plumes could reach those communities.

To assess the impact of FFS burn authorization practices, Sierra Club staff examined screenshots of ash and smoke plume maps for authorized burns generated by an online viewer provided by FFS/FDACs, which allows the public to view the active plumes occurring that day for FFS-authorized burns.¹⁰² Sierra Club staff had captured screenshots of these plume maps on a number of days during January through May of 2023.¹⁰³ Sierra Club staff also examined documents provided by FFS/FDACs—in response to a records request asking for the wind direction and speed information used by FFS to make decisions regarding burn authorizations—to assess the wind direction associated with each day for which Sierra Club had captured a map showing the plumes for FFS-authorized burns.¹⁰⁴ Sierra Club staff had captured the FFS/FDACs burn viewer-generated maps on a total of 66 days. Of those, there were 65 days for which wind direction information was available from FFS records, and on 63 of those days, FFS authorized burns in Palm Beach County.¹⁰⁵ On 45 of 63 days (~71%), the available plume maps showed smoke and/or ash plumes from authorized burns in Palm Beach County overlapping with the communities of Belle Glade, South Bay, or Pahokee.¹⁰⁶ In contrast, the maps showed plumes reaching Westlake, Wellington, or Royal Palm Beach from authorized burns only on 3 of 63 days (~5%).¹⁰⁷

Even considering only the authorized burns in Zone 2N of Palm Beach County, the plume maps showed plumes overlapping the communities of Belle Glade, South Bay, or Pahokee on 16 of 63 days, compared to only 3 days for Westlake, Wellington, or Royal Palm Beach.¹⁰⁸

Thus, plumes from burns authorized in the zone encompassing the portion of the sugar growing region lying between the Glades communities and eastern cities appeared to

¹⁰² The FDACS/FFS online viewer is available at fireinfo.fdacs.gov/fmis.dataviewer (last accessed July 31, 2023).

¹⁰³ Sierra Club staff had captured the screenshots haphazardly rather than in any systematic manner, and did not collect screenshots for every day during the 2023 portion of the burn season.

¹⁰⁴ See Attachment 6 – FFS Wind Direction Spreadsheets for Palm Beach County and Martin County

¹⁰⁵ See Attachment 7 – Sierra Club Analysis of Plume Maps for FFS Authorized Burns

¹⁰⁶ See Attachment 7 – Sierra Club Analysis of Plume Maps for FFS Authorized Burns.

¹⁰⁷ See *id.*

¹⁰⁸ See *id.*

overlap the predominantly Black Glades communities about 5.3 times more frequently¹⁰⁹ than the largely white eastern communities.

This difference cannot be explained away by winds blowing toward the Glades communities more frequently. For the 63 days examined, the proportion of days for which the wind direction in Palm Beach County blew in directions with east to west components (i.e. toward the Glades communities) to the days when the wind direction blew with west to east components (i.e. toward the eastern cities), was 38 to 20, or approximately 1.9.¹¹⁰ And for the entire period of 127 days spanning the first day for which a plume map had been captured (January 24, 2023) and the last (May 30, 2023), for which there was also FFS records regarding wind direction information, the same ratio (days with components blowing to the west over days with components blowing to the east) was approximately 1.7.¹¹¹ Thus, communities in the Glades were overlapped by plumes from burns authorized in Zone 2N more frequently than the eastern cities at a proportion more than double¹¹² what would be expected based solely on the winds blowing toward the Glades more frequently than toward the eastern cities.

Moreover, on a number of days, the available plume maps for approved burns indicate that FFS approved burns when the plumes would overlap with one or more of the Glades communities shortly after denying authorization for a burn at the same location on a prior day when the wind direction was toward Wellington, Westlake, or Royal Palm Beach.¹¹³ For example, on January 23, 2023, a day when the FFS spreadsheet indicates transport winds blowing from the northwest at 15 miles per hour in Palm Beach County, FFS denied burn authorizations at two locations in Zone 2N. The next day, January 24th, FFS plume maps indicate that FFS approved burns from what appear to be the same two locations, when the plume maps show smoke and/or ash from those burns overlapping with Pahokee. The figure below shows approximate denial locations from January 23rd superimposed as blue pins on the FFS/FDACs-

¹⁰⁹ $16 \div 3$ is approximately 5.33.

¹¹⁰ See Attachment 7 – Sierra Club Analysis of Plume Maps for FFS Authorized Burns.

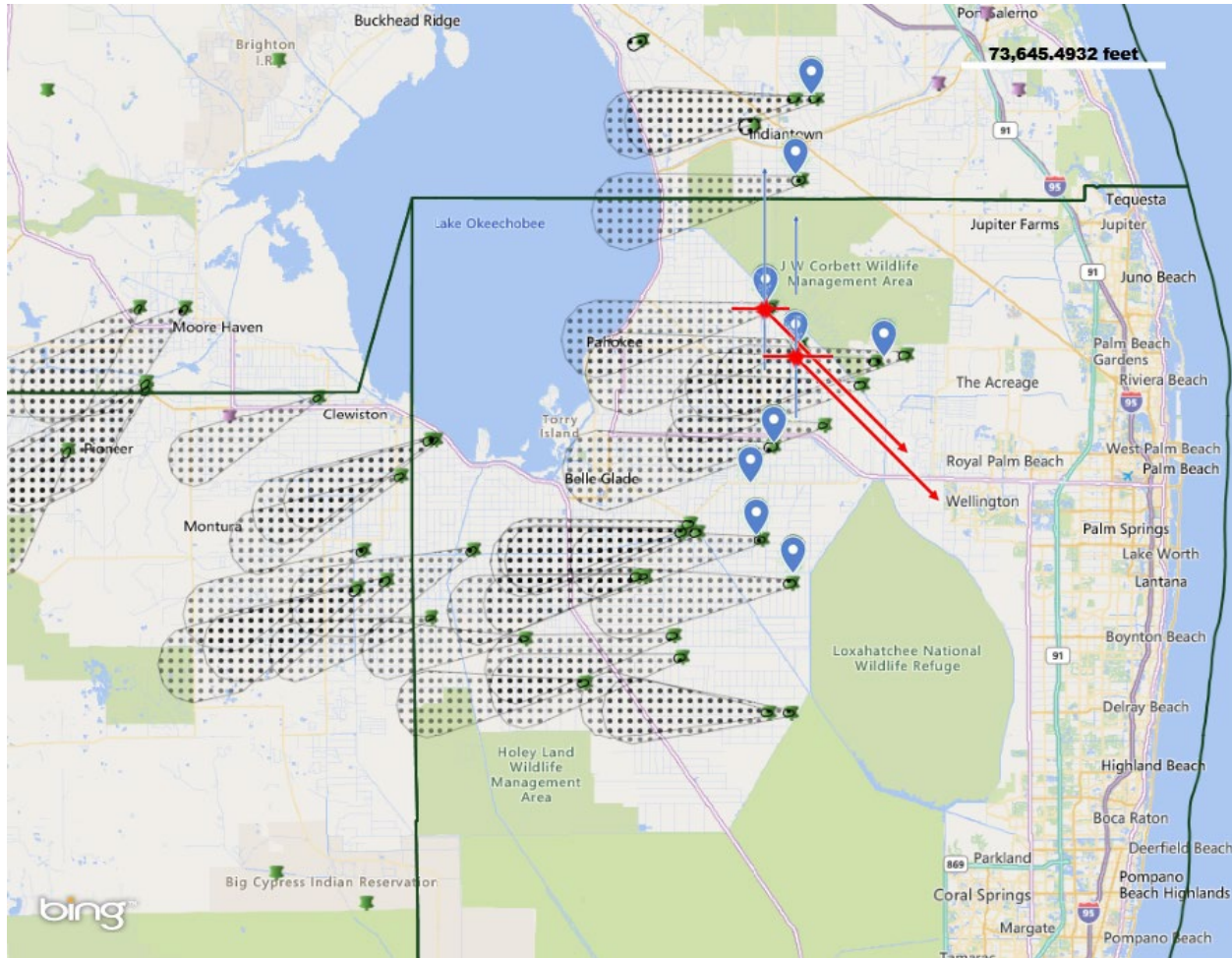
¹¹¹ See Attachment 8 – Sierra Club Analysis of FFS Wind Direction Records.

¹¹² $5.33 \div 1.9$ is approximately 2.8.

¹¹³ Sierra Club requested records from FFS regarding its denials of burn authorizations. FFS provided records indicating the latitude and longitude coordinates for proposed burn locations for which FFS had denied authorizations, and the date of the denial. See Attachment 2. Sierra Club staff used that information to map the locations of the proposed burns for which FFS denied approval, and used the information provided by FFS in Attachment 6 to determine the wind direction associated with denial and approval dates. Plume maps obtained from the FDACS/FFS burn viewer are in Attachment 7.

burn viewer map of authorized burn plumes for January 24th.¹¹⁴ The red arrows show the transport wind direction provided by FFS for January 23rd,¹¹⁵ and indicate that the wind was blowing toward the eastern cities on January 23rd, when FFS denied approval for the burns. Thus, two burns that were denied when the wind was blowing toward the eastern cities were apparently approved the next day, when the wind changed direction, blowing the plumes toward Pahokee instead.

January 23rd Burn Denials Superimposed on January 24th Approved Burn Plumes Map:

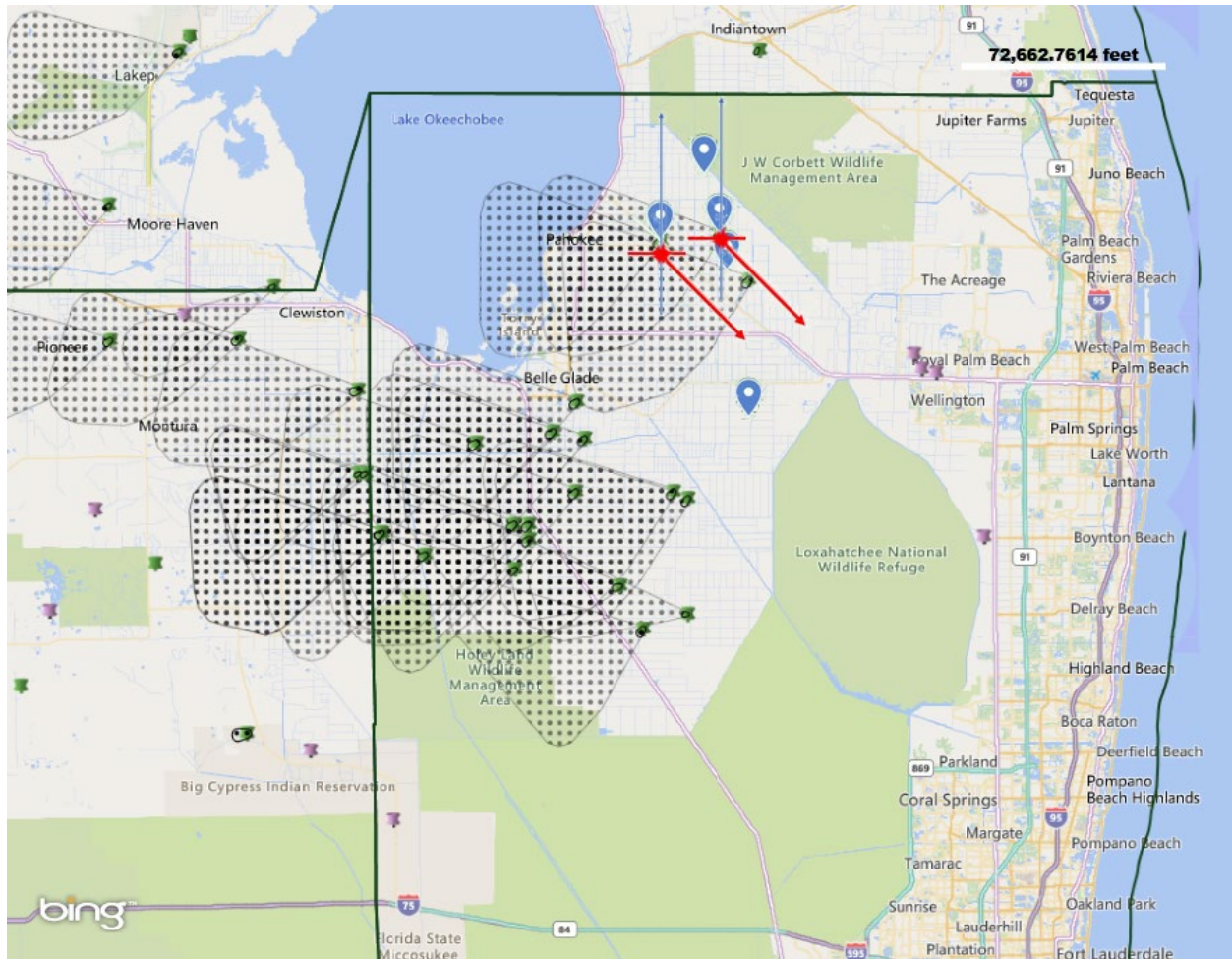


¹¹⁴ Denial locations mapped using Google – “My Maps” (<https://www.google.com/mymaps>); latitude and longitude for denial locations obtained from FFS denial records in Attachment 2. Plume Maps in Attachment 7.

¹¹⁵ See Attachment 6 – FFS Wind Direction Spreadsheets for Palm Beach County and Martin County.

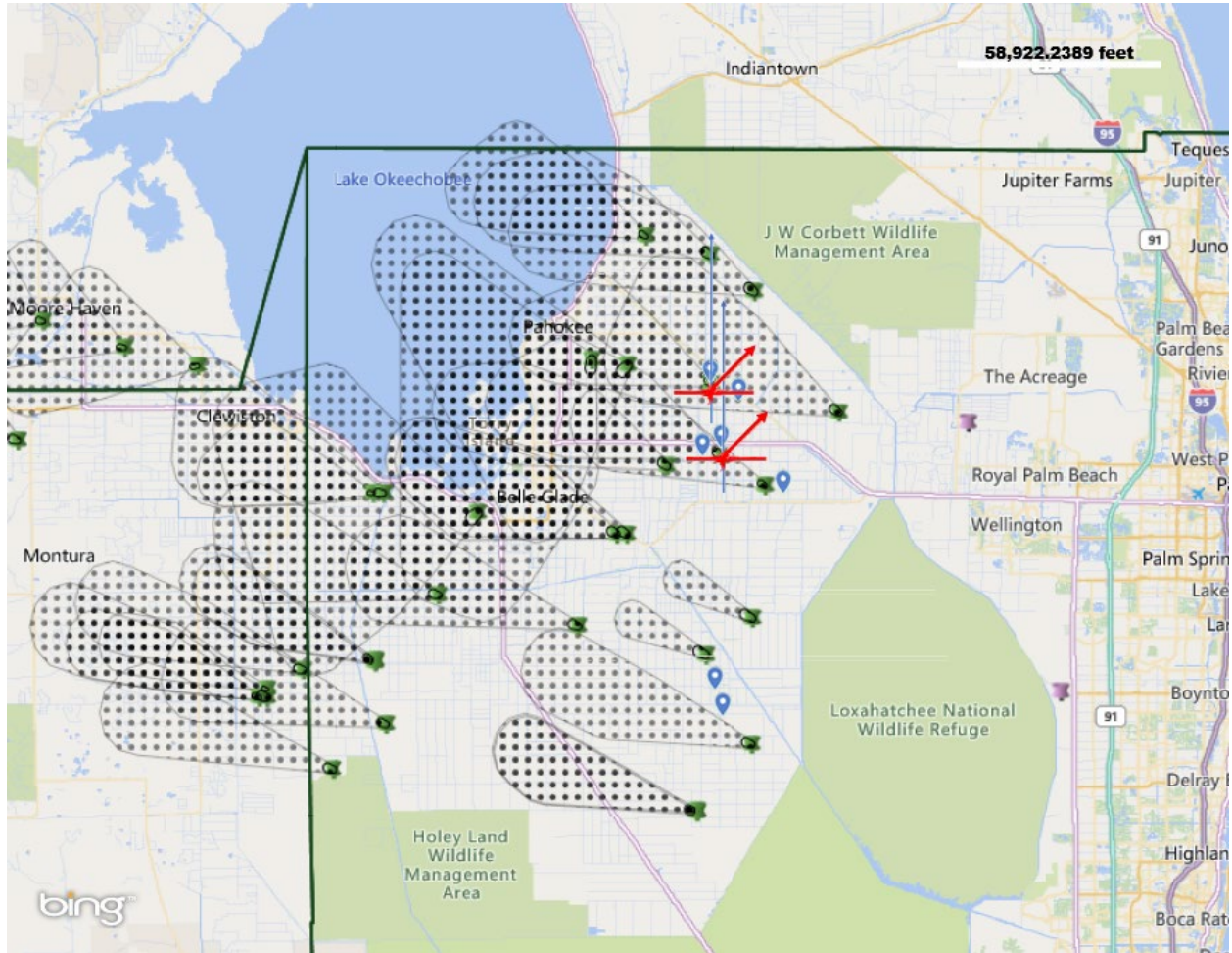
Similarly, as shown below, on February 13, 2023, a day when the transport wind direction was blowing from the northwest at 12 miles per hour in Palm Beach County, FFS denied approvals for proposed burns at locations in Zone 2N and Zone 5 upwind of the eastern cities. Then, on the next day, February 14, 2023, FFS apparently approved burns at the same locations when the plumes from those burns would overlap Pahokee.

February 13th Burn Denials Superimposed on February 14th Approved Burn Plumes Map:



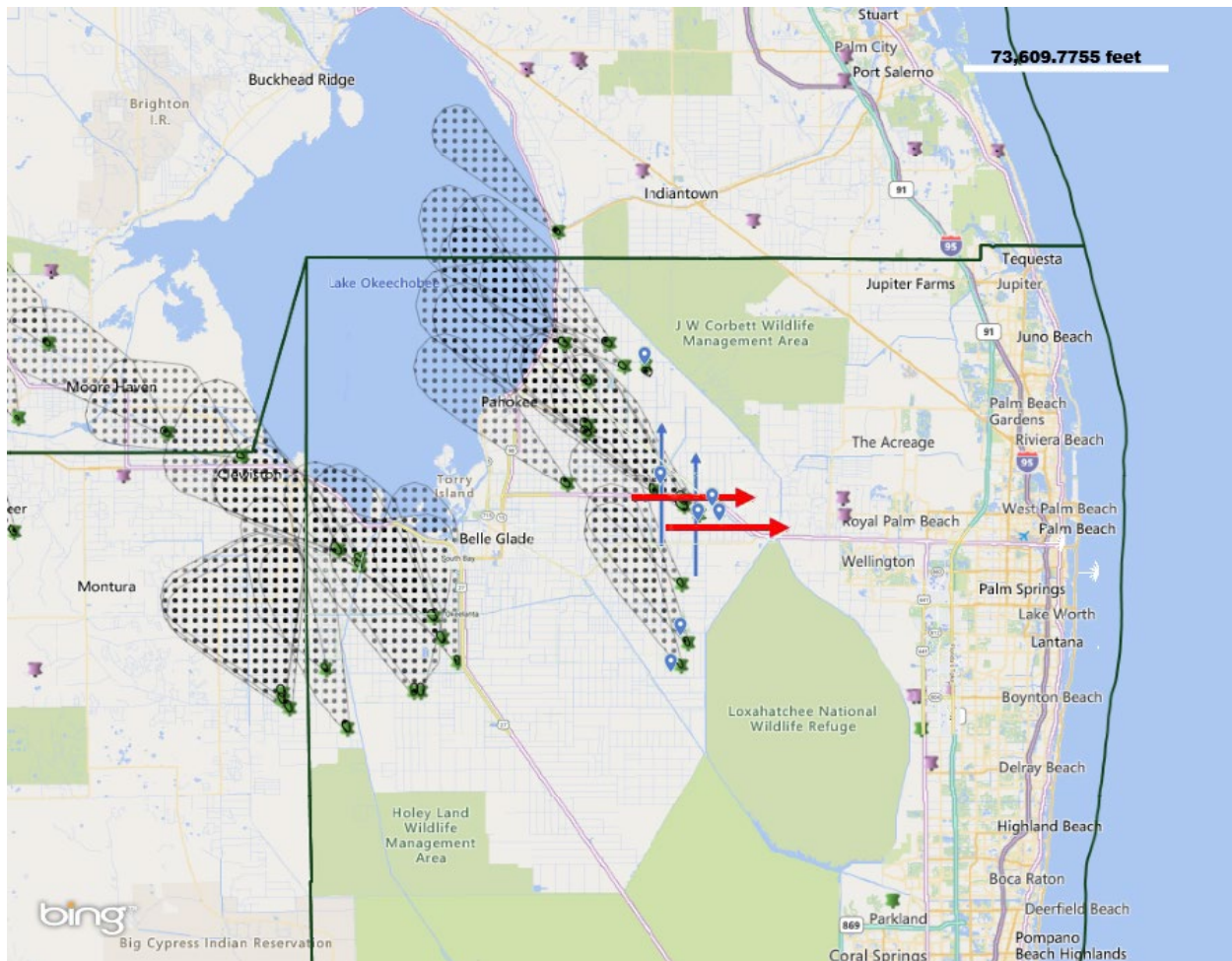
And whereas, on April 1, 2023, FFS denied approval for burns at two locations in Zone 2N when the transport wind was blowing from the southwest at 12 miles per hour, FFS apparently authorized burns at what seem to be the same locations on April 4, 2023, when the wind direction sent the plumes toward Pahokee and Belle Glade instead:

April 1st Burn Denials Superimposed on April 4th Approved Burn Plumes Map:



Similarly, as shown below, on May 3, 2023, apparently FFS denied approval for two burns in Zone 2N, when the wind was blowing from the west at 12 miles per hour, toward the eastern cities, and then authorized burns at what appears to be the same locations on May 5, 2023, when the plumes from those burns overlapped with Pahokee:

May 3rd Burn Denials Superimposed on May 5th Approved Burn Plumes Map:



The examples above demonstrate how FFS practices to protect the eastern cities from ash and smoke impacts—by prohibiting burns in Zone 2N on days when the wind is blowing toward the eastern cities at 10 miles per hour or more—have the effect of shifting those impacts to the predominantly Black Glades communities.

Sierra Club staff also analyzed information from FFS regarding its burn authorizations and denials to compare the denial rate for days when the winds were blowing toward the eastern cities versus the denial rate for days when the wind was blowing in other directions.¹¹⁶ For proposed burns in Palm Beach County received during the most recent burn season (from October 1, 2022 through May 30, 2023), on the subset of days when the transport or surface wind was blowing from the northwest, west, or southwest (toward the east), FFS denied approximately 27.1% of proposed burn applications.¹¹⁷ In contrast, FFS denied approximately 13.2% of proposed burn applications for burns in Palm Beach County for the subset of days during the same season when the wind was blowing in all other directions.¹¹⁸ **Thus, for proposed burns in Palm Beach County, the denial rate for days when the wind was blowing toward the east was roughly double the denial rate for days when the wind was blowing in all other directions.**¹¹⁹ This demonstrates the impact of the practices described in FFS documents, discussed above, memorializing the agency's internal policies and practices of denying authorizations for burns in the sugar growing region areas to the west of Wellington, Westlake, and Royal Palm Beach when the wind direction and speed would direct smoke or ash plumes toward those eastern cities, while providing no equivalent protection to the communities on the western side of those areas—Pahokee, Belle Glade, and South Bay.¹²⁰ Further, as illustrated by the examples from January, February, April, and May discussed above, an obvious consequence of it being twice as likely that a proposed burn will be denied on a day when the wind is blowing toward the east is that a burn at the same location will be approved on a subsequent day when the wind is blowing away from the eastern cities, including in directions toward the Glades communities of Pahokee, Belle Glade, and South Bay.

The plume maps for authorized burns and burn denial records provided by FFS also illustrate that on days when the wind was blowing toward the east, FFS authorized burns with

¹¹⁶ FFS provides information on the daily number of sugarcane burns authorized in each county at <http://fireinfo.fdacs.gov/fmis/publicreports/BurningAuthorizationsSummary.aspx>. Using that information, the number of denials for the same days, *see* Attachment 2, and the wind direction information FFS provided in response to a records request, *see* Attachment 6, Sierra Club calculated the proportion of applications denied for days when the wind direction had a component blowing from the west (northwest, west, or southwest) compared to the proportion of applications denied for all other days. *See* Attachment 9 – Sierra Club Analysis of Denials by Wind Direction.

¹¹⁷ *See* Attachment 9 – Sierra Club Analysis of Denials by Wind Direction.

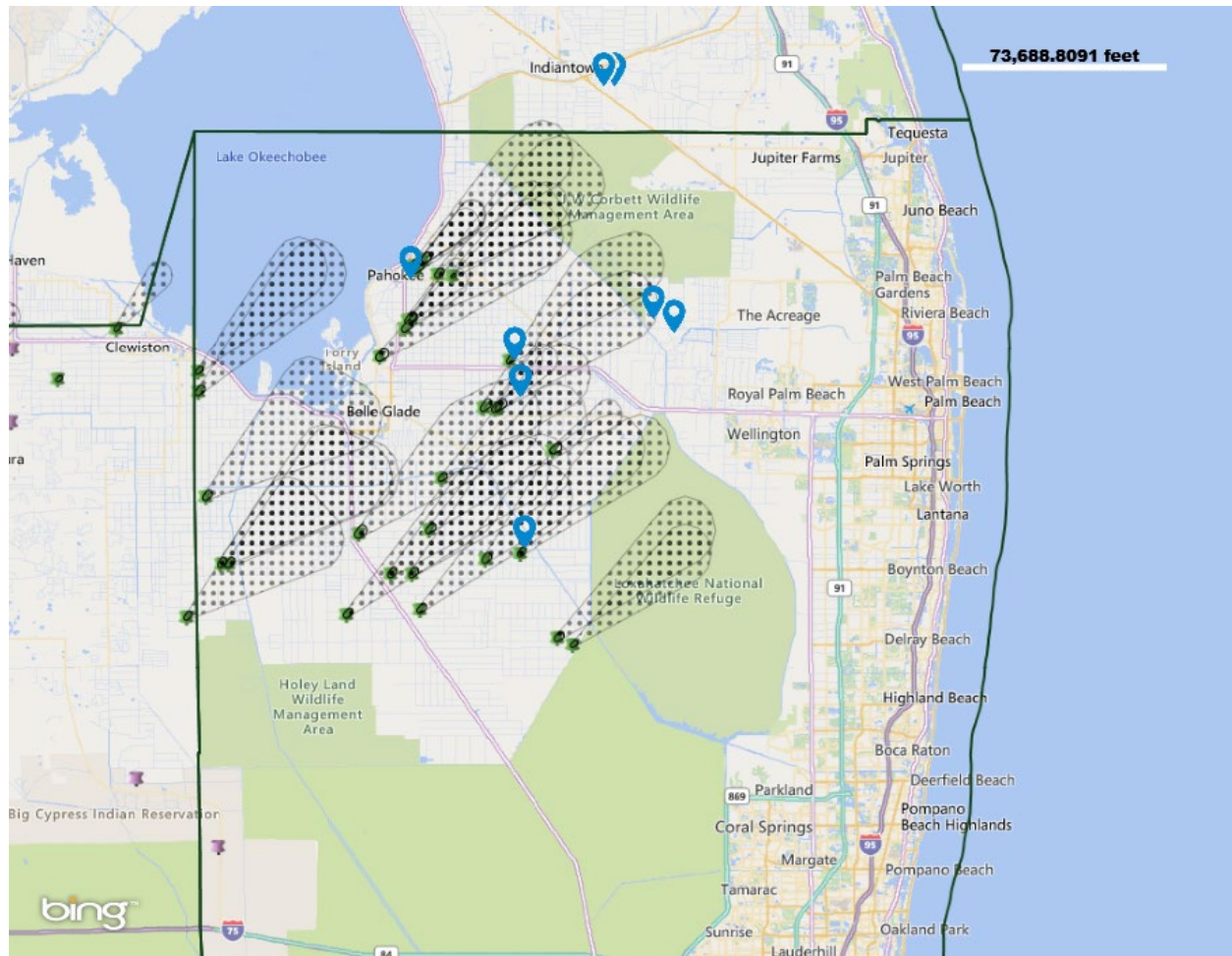
¹¹⁸ *See* Attachment 9 – Sierra Club Analysis of Denials by Wind Direction.

¹¹⁹ The respective proportions of applications denied were 0.2706 for the days with wind from NW, W, or SW and 0.1318 for the other days. *See id.* $0.2706 \div 0.1318 = 2.05$.

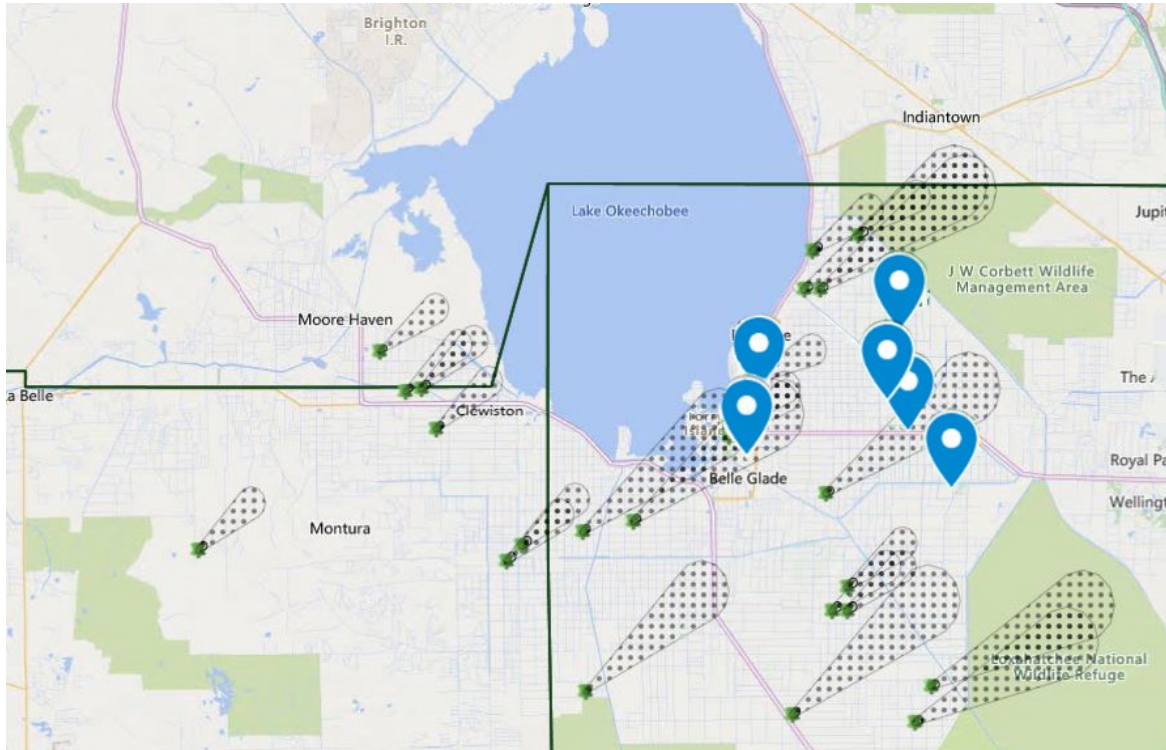
¹²⁰ *See supra* section III.B.

plumes of ash or smoke overlapping Pahokee, Belle Glade, and/or South Bay on the same days that it denied authorizations for burns at locations closer to Wellington, Westlake, or Royal Palm Beach. For example, for February 3, 2023, when the transport winds were blowing from the west at 18 miles per hour according to FFS's wind direction spreadsheet, FFS authorized burns with plumes that overlapped South Bay, while denying approval for burns at locations near Westlake. Similarly, for March 13, 2023, when transport winds were blowing from the west according to FFS's spreadsheet, FFS authorized burns with plumes that overlapped parts of Belle Glade, while denying burns at multiple locations in Zone 2N upwind from Westlake and the other eastern cities. The figures below show the locations of denied burns for those days as blue pins superimposed on the FFS/FDACS-burn viewer generated plume maps for approved burns for the same days.

February 3, 2023 Burn Denials Superimposed on February 3, 2023 Approved Burn Plumes Map:



March 13, 2023 Burn Denials Superimposed on March 13, 2023 Approved Burn Plumes Map:



The approvals and denials for those dates thus illustrate FFS apparently conferring stringent protection on the eastern communities while denying the same protection to the Glades communities.

In sum, consistent with its memorialization of its practices based on wind direction and speed,¹²¹ FFS appears to approve burns with ash and smoke plumes overlapping the predominantly Black Glades communities of Belle Glade, Pahokee, and South Bay while denying approval for burns with plumes that would reach the largely white eastern cities of Westlake, Wellington, and Royal Palm Beach—**not only subjecting the Glades communities to impacts from which the largely white eastern communities are protected, but also shifting additional impacts to the Glades communities as a consequence of protecting the eastern communities.**

In addition to the evidence above, the conclusions of a 2022 study underline the disparate impacts experienced by Glades communities compared to eastern cities. Nowell et al. (2022) found that sugarcane harvest activities increased mean PM_{2.5} by 0.7 µg/m³ during the winter burn season

¹²¹ See Attachment 4 - 2020/2021 Description of FFS Burn Authorization Practices.

based on monitoring data from Belle Glade, whereas PM_{2.5} concentrations measured at Royal Palm Beach increased by 0.2 µg/m³ during the burn season.¹²² The study estimated that sugarcane harvest activities contributed approximately 1.4 µg/m³ to mean PM_{2.5} at Belle Glade during the six-month harvest season, compared to 0.9 µg/m³ for Royal Palm Beach.¹²³ As discussed above, PM_{2.5} is “linked to lung and other cancers, cardiopulmonary disease such as ischemic heart disease, and premature death.”¹²⁴ Based on modeled estimates of PM_{2.5} contributions from sugarcane burns, Nowell et al. (2022) found: “Sugarcane fires . . . are expected to have 10 times greater mortality impact on SGR [Sugar Growing Region] residents, who were predominantly non-White and lower income (57% non-White, \$34,000 median household income), than wealthier residents of coastal Palm Beach County (23% non-White, USD \$71,000 median household income) or South Florida in general (23% non-White, USD \$62,000 median household income) (U.S. Census Bureau 2020b).”¹²⁵ The authors also noted that “[c]hronic exposure to biomass burning, including sugarcane smoke, also has serious nonfatal consequences, including asthma, bronchitis, missed work and school days, and impacts on pregnancy and child development.”¹²⁶

According to data from EPA’s EJScreening tool, asthma prevalence values for South Bay, Belle Glade, and Pahokee, are 10.3, 11.6, and 11.8, respectively, compared to 8.0, 8.2, and 8.4 for Wellington, Royal Palm Beach, and Westlake, an average of 8.7 for Florida, and a U.S. average of 10.¹²⁷

¹²² Nowell, et al. (2022), *supra* note 6, at 087004-6.

¹²³ *Id.*

¹²⁴ *Id.* at 087004-1 (citing supporting studies).

¹²⁵ *Id.* at 087004-10.

¹²⁶ *Id.* at 087004-11 (citing studies). Nowell et al. (2022) also explained: “Sugarcane fires and other biomass burning fires are sources of PM_{2.5}, which is linked to lung and other cancers, cardiopulmonary disease such as ischemic heart disease, and premature death...Biomass burning smoke is also linked to serious, nonfatal respiratory and cardiovascular morbidity, including asthma, bronchitis, pneumonia, and chronic obstructive pulmonary disease, as well as low birth weight and increased COVID-19 mortality.” *Id.* at 087004-1 (citing studies).

¹²⁷ See Attachment 5 – EJScreen Community Reports for Belle Glade, Pahokee, South Bay, Wellington, Westlake, and Royal Palm Beach. United States Environmental Protection Agency, 2023 version, EJScreen Community Reports, available at: <https://ejscreen.epa.gov/mapper> (generated Aug. 2, 2023 or Aug. 3, 2023, as shown on each report); see also U.S. EPA, EJScreen Map Descriptions <https://www.epa.gov/ejscreen/ejscreen-map-descriptions> (explaining that asthma values shown in EJScreen are “Asthma prevalence among adults aged 18 or older. This data is available at the tract level; the same tract value is then assigned to all sub block groups.”).

Comparison of Asthma Indicator Value in Glades cities vs. Eastern cities¹²⁸

City	Asthma Health Value (from EJScreen)	National Percentile	State Percentile
Belle Glade	11.6	86	96
Pahokee	11.8	89	97
South Bay	10.3	64	89
Wellington	8	5	24
Westlake	8.4	11	42
Royal Palm Beach	8.2	8	35

A 2021 analysis based on eight years of hospitalization data found that during burn season, hospitalizations and emergency room visits for respiratory illness rose by 35% for patients from Belle Glade, compared to a 19% rise for patients from Indiantown, “a rural, largely white area just north of the Palm Beach County sugar-growing region.”¹²⁹

In addition to health impacts, residents of the Glades suffer other disparate negative effects to their general welfare. Burns fill the air with the smoke, soot, and ash (“black snow”).¹³⁰ To avoid the smoke and ash, residents, including school children, stay inside instead of enjoying the outdoors,¹³¹ impairing their recreational interests and enjoyment of life. During the months of the burning season (October to May), residents are burdened with cleaning soot from their homes, cars, and clothes.¹³² Residents must also bear the extra costs of running air conditioners

¹²⁸ The information in this chart is from EJScreen Community Reports for Belle Glade, Pahokee, South Bay, Wellington, Westlake, and Royal Palm Beach. United States Environmental Protection Agency, 2023 version, EJScreen Community Reports, available at: <https://ejscreen.epa.gov/mapper>, last accessed Aug. 2, 2023 or Aug. 3, 2023, as shown on each report. See Attachment 5 – EJScreen Reports.

¹²⁹ A Complete Failure of the State, *supra* note 35.

¹³⁰ Grist Investigation, *supra* note 27; Black Snow Investigation, *supra* note 14.

¹³¹ See Black Snow Investigation, *supra* note 14 (“The Post and ProPublica spoke with dozens of Glades residents, teachers, custodians, doctors, nurses and field workers about their experiences with cane burning... Many of these accounts paint a picture of a community often left with little choice but to stay indoors to avoid the smoke and ash outside... To cope with the smoke and ‘black snow,’ the flurries of ash that carry into neighborhoods, residents have adopted a series of unwritten rules: If you can’t shut your windows in the heat, press an air conditioner filter against the opening to keep the smoke out; rush children inside at the first whiff of the familiar, acrid stench; brush the flakes off your clothes instead of rubbing them off, otherwise they’ll stain; and, importantly, keep an inhaler or nebulizer nearby... Teachers say that, during burning season, they cancel outdoor recess and send kids home after asthma attacks.”); see also Grist Investigation, *supra* note 27 (“the architecture firm contracted by the Palm Beach County school board to modernize [a school in South Bay] emphasizes that its new design prevents students from having to walk outside during the day: ‘Sugarcane fields are burned sending hazardous air pollutants into the air. The heavy smoke and ash prohibit outdoor play, keeping the children inside throughout the school day many times during the year.’”).

¹³² See, e.g., <https://youtu.be/cPoC5fQoBJE> (video showing “black snow” on sidewalk in Belle Glade); <https://youtu.be/HnN4WXtG1JI> (video showing “black snow” on sidewalk and parking lot in Belle Glade); Grist Investigation, *supra* note 27 (comment of “out-of-town ally” [REDACTED] regarding frustration with cleaning ash

even during the coolest months of the year because they have to close their windows to keep out the soot.¹³³ As smoke rarely reaches eastern communities due to FFS burn authorization practices,¹³⁴ these impacts are disproportionately concentrated in the Glades.



Smoke plumes behind residences in Belle Glade.¹³⁵

from boat docked in more western part of SGR, and stating: “I’m personally fed up...I just don’t understand how [Glades residents] can put up with this, being targeted on a daily basis.”); Black Snow Investigation *supra* note 14 (describing residents having to brush flakes of “black snow” off their clothes to avoid staining them).

¹³³ Antigone Barton and Hannah Morse, *Glades residents left behind: Nikki Fried’s ‘changes’ to cane burning served only Big Sugar*, Palm Beach Post (Aug. 11, 2022), <https://www.palmbeachpost.com/in-depth/news/local/2022/08/11/cane-burning-nikki-frieds-historic-changes-served-only-big-sugar/10030576002/> (“As Glades residents clean ash and soot from their porches, cars and roofs, the consequences of living in the midst of burning agricultural waste more than half of every year further impoverish their communities, [Colin] Walkes [a former Pahokee mayor] says. The burning reduces property values, forces residents living on low income to run air conditioning during the coolest months of the year because they have to close their windows and burdens them with medical expenses, he says.”).

¹³⁴ Black Snow Investigation, *supra* note 14.

¹³⁵ Image from Mary Ellen Klas, *Florida Lawmakers Pass Bill to Shield Sugar Farmers from Lawsuits*, Tampa Bay Times (Apr. 22, 2021), available at: <https://www.tampabay.com/news/florida-politics/2021/04/22/legislators-pass-bill-to-shield-sugar-farmers-from-lawsuits/>; see also Stop the Burn, Videos, available at: <https://stopsugarburning.org/the-burning-problem/#gallery>.



Example of “black snow” coating a car windshield in 2018.¹³⁶



Ash from sugarcane burns on February 24, 2023.

¹³⁶ Stop the Burn, Gallery, <https://stopsugarburning.org/the-burning-problem/#gallery>.

B. Florida Forestry Officials Acted Quickly to Protect Predominantly White Communities from Smoke and Ash Impacts But Have Not Responded Accordingly to Complaints from Communities of Color

It is clear that FFS is aware of the negative impacts of smoke and ash plumes from sugarcane burning on the welfare of Palm Beach County residents because Department of Agriculture officials took prompt action to alleviate those impacts as soon as predominantly white communities complained of experiencing them in 1991,¹³⁷ and FFS has continued to provide stringent protections to those communities based on wind direction constraints. As detailed above, in 1991, due to the expansion of eastern cities toward the SGR, predominantly white communities of Wellington and Royal Palm Beach experienced—and complained to officials of—the same kinds of adverse impacts plaguing predominantly Black communities in the Glades.¹³⁸ In response, new policies were developed that same year to restrict sugarcane burns when the wind would blow plumes toward those eastern communities. And the agency clearly recognized the negative effects of sugarcane burning at that time, as a Florida Department of Agriculture official stated that the burn restrictions were based on the need “to eliminate the potential problems for people having to breathe the ash and deal with stuff falling on their [property].”¹³⁹

Despite this acknowledgement that smoke and ash from the burns has negative impacts on the welfare of communities that warranted prohibiting burns to prevent them, the FFS has seemingly ignored these same exact problems when they are severely impacting communities in the Glades. It has no justification for doing so.

A sugar farmer and state representative publicly suggested that the disparity in protections is based on differences in population as there currently are “1.4 million people living in Palm Beach County but only probably 30 or 40 thousand of them in Belle Glade.”¹⁴⁰ But the relative population sizes of the eastern and Glades communities cannot provide a rational basis for the distinctions in protection. When Florida officials implemented the wind-direction-based burn restrictions to protect the predominantly white eastern communities in 1991 in response to complaints from residents in Wellington and Royal Palm Beach, approximately 35,000 people

¹³⁷ Black Snow Investigation, *supra* note 14.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Grist Investigation, *supra* note 27.

lived in those cities.¹⁴¹ The total population of Belle Glade, Pahokee, and South Bay at that time was similar, at approximately 28,000.¹⁴² And, today, a comparable number of people live in those Glades communities—around 28,672.¹⁴³ Yet the FFS has failed to take any substantive measures to provide them with tantamount protections from the same negative impacts, either in 1991 or in the decades since. In 1991, concern about the welfare of “only” 35,000 residents in predominantly white communities was sufficient to motivate officials to take action to protect those communities from smoke and ash from cane burns. Since then, and now, in 2023, the welfare of a comparable population in predominantly Black communities continues to suffer from the same impacts, yet FFS declines to exercise its power to protect them.

C. FFS Has Failed to Act to Address the Disproportionate Impacts on Predominantly Black Communities

FFS has not acted to prevent disproportionate harm to predominantly Black communities in the Glades, even though the negative impacts of its ongoing practices on those communities were apparent in 1991 and continue to be apparent today.

As detailed above, in the years after Florida Forestry officials instituted wind-direction based protections for the eastern communities, Glades community members raised concerns and complained about similar impacts, to no avail.¹⁴⁴ And grassroots activists in the Glades have been advocating for changes to the FFS’s sugarcane burn program, including by lobbying and meeting with FFS leadership.¹⁴⁵

To date, FFS has failed to respond to provide a meaningful response to these efforts. In 2019, Department of Agriculture Commissioner Nikki Fried announced changes to the sugarcane burn program, based on a “promise that [she] made to the people of the state of Florida that [her

¹⁴¹ Black Snow Investigation, *supra* note 14 (“About 35,000 people lived in Wellington and Royal Palm Beach in the early 1990s, when the complaints first flowed. Today, about 31,000 people live in the Glades.”).

¹⁴² U.S. Department of Commerce, 1990 Census of Population General Population Characteristics Florida, Section 1, (1990- CP-1-11), Table 6 page 33, 73, 84 *available at*

<https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-11-1.pdf> (showing population of Belle Glade city of 16,177; Belle Glade camp of 1,616; South Bay of 3,558; and Pahokee 6,822—totaling 28,173).

¹⁴³ Black Snow Investigation, *supra* note 14 (“About 35,000 people lived in Wellington and Royal Palm Beach in the early 1990s, when the complaints first flowed. Today, about 31,000 people live in the Glades.”); *see also* Attachment 5 (EJScreen Reports showing current populations for Belle Glade, South Bay, and Pahokee of 17,455; 5,733; and 5,484, respectively, which totals to 28,672 for the three communities.)

¹⁴⁴ *See supra* section III. B.

¹⁴⁵ *See id.* *See also* Stop the Burn, “Our Campaign: Speaking Truth to Power,” <https://stopsugarburning.org/stop-the-burn/#speakingtruth>.

administration was] going to be bold . . . [and was] going to look at changes.”¹⁴⁶ However, this stated commitment to change proved to be an empty promise, as the changes to the program did not ban sugarcane burning when the wind blows toward the Glades, nor did they implement any protections for the Glades communities that would have been comparable to those guaranteed to the eastern communities in 1991.¹⁴⁷ When provided with the same opportunity and reason to protect communities of color in 2019 and 2020 as it had to protect affluent white communities in 1991, the FFS chose to ignore the welfare of the Glades communities and to continue disproportionately burdening them with the negative impacts of sugarcane burning. And it continues to do so now.

D. There Is No Justification for the Florida Forest Service’s Failure to Address the Disproportionate Impacts on Predominantly Black Communities

The FFS has no legitimate justification for its decisions to protect largely white eastern communities from the negative impacts of sugar cane burning while exposing predominantly Black communities in the nearby portion of the SGR to those harms, and even shifting additional impacts to the latter, as detailed above. While the FFS may attempt to justify its sugarcane burn authorization decisions based on population differences between eastern and western Palm Beach County, this justification fails for several reasons.

As discussed above, the combined population of Pahokee, Belle Glade, and South Bay is roughly 28,600 people—substantially similar to the population of the eastern communities of Wellington and Royal Palm Beach in 1991, which the FFS took swift and serious action to protect from sugarcane burn consequences at that time. The FFS cannot claim that its initial justification for issuing restrictions on sugarcane burning to avoid risk to 35,000 people in predominantly white communities was legitimate while also attempting to justify its decision *not* to protect 28,600 people in predominantly Black communities from the same impacts.

Moreover, population is far from the only salient consideration here. Focusing solely on the population difference in evaluating impacts on general welfare ignores a number of key risk factors that affect the Glades communities. Glades communities have existing socioeconomic

¹⁴⁶ “Florida Agriculture Commissioner Nikki Fried Adds Restrictions to Sugar Industry Burning.” CBS News (Oct. 2019), available at: <https://www.cbsnews.com/miami/news/florida-agriculture-commissioner-nikki-fried-adds-restrictions-to-sugar-industry-burning/>.

¹⁴⁷ *Id.*; see Antigone Barton and Hannah Morse, *Glades residents left behind: Nikki Fried’s ‘changes’ to cane burning served only Big Sugar*, Palm Beach Post (Aug. 11, 2022), <https://www.palmbeachpost.com/in-depth/news/local/2022/08/11/cane-burning-nikki-frieds-historic-changes-served-only-big-sugar/10030576002/>.

factors and health burdens that increase vulnerability to environmental hazards like air pollution from sugarcane burning. According to EPA’s EJScreen tool, the Glades cities are likely more vulnerable to respiratory hazards than the eastern cities, taking into account both emissions exposures and demographics. The EJ Index for Air Toxics Respiratory Hazard combines demographic factors—low-income population and people of color populations—with an analysis of toxic pollutants in ambient outdoor air, to indicate community-level vulnerability to respiratory hazards.¹⁴⁸ It is based on data from the National Emissions Inventory (NEI), which accounts for emissions from sugarcane field burns in Palm Beach County, Hendry County, and Glades County.¹⁴⁹

Comparison of Air Toxics Respiratory Hazard Index in Glades cities vs. Eastern cities¹⁵⁰

City	National Percentile	State Percentile
Belle Glade	78	71
Pahokee	77	70
South Bay	66	73
Wellington	53	39
Westlake	61	50
Royal Palm Beach	59	47

The state and national percentiles for this indicator for Glades communities are substantially higher than for the eastern cities.

And, as detailed above, EPA’s EJScreen reports show that Belle Glade, Pahokee, and South Bay have asthma prevalence values worse than Wellington, Westlake, and Royal Palm Beach, and worse than Florida and U.S. averages.

Finally, there are alternatives that would reduce or potentially eliminate the discriminatory effects. The FFS could alleviate the discriminatory effects at issue by phasing out

¹⁴⁸ U.S. Environmental Protection Agency (EPA), 2023. EJScreen Technical Documentation, at 18, available at: <https://www.epa.gov/system/files/documents/2023-06/ejscreen-tech-doc-version-2-2.pdf>; U.S. Environmental Protection Agency (EPA), EJ and Supplemental Indexes in EJScreen, available at: <https://www.epa.gov/ejscreen/ej-and-supplemental-indexes-ejscreen>, last accessed Aug. 21, 2023.

¹⁴⁹ U.S. Environmental Protection Agency (EPA), National Emissions Inventory (NEI), 2020 NEI Data Retrieval Tool, available at: <https://awsedap.epa.gov/public/single/?appid=20230c40-026d-494e-903f-3f112761a208&sheet=5d3fdda7-14bc-4284-a9bb-cfd856b9348d&opt=ctxmenu.currsel>, last accessed 8/2/2023.

¹⁵⁰ The information in this chart is from EJScreen Community Reports for Belle Glade, Pahokee, South Bay, Wellington, Westlake, and Royal Palm Beach. United States Environmental Protection Agency, 2023 version, EJScreen Community Reports, available at: <https://ejscreen.epa.gov/mapper> (last accessed Aug. 2, 2023 or Aug. 3, 2023, as shown on each report). See Attachment 5 – EJScreen Reports.

and ultimately ending all authorizations for sugarcane burns, such that “green harvesting” would ultimately replace pre-harvest burning. This would result in cleaner air and lower health risks for all of South Florida, and it would have an especially positive impact on the Glades communities. As discussed above, three of the top five sugar-producing countries have shifted toward green harvesting of sugarcane, and either have stopped burning or are in the process of phasing it out.¹⁵¹

FFS could also establish buffer zones around Belle Glade, Pahokee, and South Bay, among other communities in the SGR, and deny applications for burn authorizations where the plume modeling generated with the application shows that the plumes will overlap with those zones given the anticipated wind conditions for the day of the burn.

Another option would be for FFS to designate no-burn buffer zones within a specified distance from those communities.¹⁵² Advocates have pressed for the adoption of such buffer zones.¹⁵³

In light of the available alternatives, the disproportionate effects imposed on the Glades communities are particularly egregious and wholly unnecessary.

V. EPA and USDA Have Jurisdiction

The EPA and USDA have jurisdiction over this complaint because it arises from activities and practices of the FFS, which receives federal funding from both agencies as a subdivision of FDACS. Jurisdiction under Title VI attaches once an entity receives federal financial assistance.¹⁵⁴ The FFS is a “program or activity” that receives federal funding from the EPA and USDA; therefore, its actions must comply with Title VI to continue to receive federal funding and the EPA and USDA, with the DOJ’s oversight, must ensure its compliance. This complaint is timely because actions by FFS under its burn authorization program, that provided protection to largely white communities from the impacts of cane burns while allowing

¹⁵¹ Black Snow Investigation, *supra* note 14. See also *supra* section III.C.

¹⁵² See e.g., Hannah Morse, *Palm Beach County Democrats urge Nikki Fried to expand sugar cane burning buffers*, Palm Beach Post (Apr. 13, 2022) available at <https://www.palmbeachpost.com/story/news/local/2022/04/13/palm-beach-county-democrats-support-wider-sugar-cane-burning-buffers-glades/7287296001/> (describing resolution asking then-Commissioner Nikki Fried to require a “minimum 27-mile radius burn-free buffer zone around communities impacted by pre-harvest sugar field burning as a first step toward the eventual end of pre-harvest sugar field burning.”).

¹⁵³ *Id.*

¹⁵⁴ DOJ Title VI Legal Manual, at Section V.

predominantly Black communities to suffer those impacts, have occurred within the last 180 days.

A. The FFS, and its Administration of the Agricultural Burn Authorizations, Is a “Program or Activity” Subject to Title VI

A “program or activity” includes “all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance.”¹⁵⁵ The FFS is a division of FDACS, which is a state agency. Thus, the FFS’s operations, including all of its actions involving the burn authorization decisions at issue here, are considered “program[s] or activit[ies]” under Title VI.¹⁵⁶

B. FDACS, of Which FFS Is a Division, Receives Federal Funding from the EPA and USDA

According to the DOJ Title VI Legal Manual, “[t]he clearest example of Title VI-covered federal financial assistance is money provided through federal grants, cooperative agreements, and loans.”¹⁵⁷ Funding can be granted directly by an agency or indirectly through another entity, and “[i]n either case, the direct recipient as well as the secondary or subrecipient are considered to have received federal funds.”¹⁵⁸ The federal financial assistance does not have to relate to the specific program being challenged— so long as any part of the entity receives federal funding, Title VI applies.¹⁵⁹

EPA and USDA have provided grant funds to FDACS, the broader department within which the FFS operates, including grants for “forest stewardship,” “forest health protection,” and “cooperative forestry assistance.”¹⁶⁰ The following examples of federal funding from EPA and USDA fall within the scope of Title VI:

¹⁵⁵ 42 U.S.C. § 2000d-4a.

¹⁵⁶ *See id.*

¹⁵⁷ DOJ Title VI Legal Manual, at Section V.C.1.a.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at Section V.A.3. *See Howe v. Hull*, 874 F. Supp. 779, 789 (N.D. Ohio 1994) (“Defendant cannot receive federal funds on the one hand, and on the other deny he is covered by the [federal Rehabilitation Act] simply because he received no federal funds for his involvement with [complainant].”).

¹⁶⁰ *See* Attachment 10 – Lists of Grants from EPA and USDA to FDACS.

EPA granted FDACS \$109,314 from October 1, 2019 through September 30, 2023.¹⁶¹ On June 21, 2023, EPA granted \$1,174,330 to FDACS for performance through September 30, 2025.¹⁶²

USDA granted FDACS \$862,773 from January 13, 2021 to September 30, 2023 through the Forest Stewardship Program, “to promote and enable the long-term active management of non-industrial private and other non-federal forest land to sustain the multiple values and uses that depend on such lands.”¹⁶³ On July 29, 2023, USDA outlayed \$17,892 to FDACS for the “Florida Forestry Legacy Administration Program,”¹⁶⁴ for which FFS is the “State Lead Agency.”¹⁶⁵

Thus, FDACS and all of its divisions, including the FFS, are subject to Title VI’s prohibition on discrimination. The EPA and USDA, as grantor agencies, are responsible for ensuring that FDACS and FFS comply with Title VI.

C. FFS Has Taken Actions with Discriminatory Effects in the Last 180 Days

Pursuant to EPA and USDA Title VI regulations, administrative complaints are considered timely if they are filed within 180 calendar days of the date of the last alleged act of discrimination.¹⁶⁶ A complaint alleging a continuing discriminatory policy or practice must “allege facts that are sufficient to indicate either a series of related acts of which one occurred

¹⁶¹ USASpending.gov, Award Profile: Grant Summary, available at: https://www.usaspending.gov/award/ASST_NON_98408720_6800. The database states that the purpose of this award is “to address its highest environmental priorities, improve environmental performance, achieve administrative savings and strengthen the partnership between the Florida Department of Agriculture and Consumer Services and EPA. This agreement funds statewide programs to: provide a comprehensive program of registration, labeling, training, certification, inspections and enforcement to prevent unnecessary exposure to humans and the land and water by ensuring that pesticides are used and disposed of in the manner specified on each product. inspections and enforcement will deter non-compliance with product requirements.” *Id.*

¹⁶² USASpending.gov, Award Profile: Grant Summary, available at: https://www.usaspending.gov/award/ASST_NON_98408723_6800 (Assistance transaction unique key: 6800_98408723_-NONE-_66.605_0; award id: 98408723). The database states that “[t]he purpose of this agreement is to provide funding for the operation of the continuing pesticide environmental programs while giving it greater flexibility to address its highest environmental priorities, improve environmental performance, achieve administrative savings and strengthen the partnership between the FDACS and the Environmental Protection Agency.” *Id.*

¹⁶³ USASpending.gov, Award Profile: Grant Summary, available at: https://www.usaspending.gov/award/ASST_NON_21DG11083112010_12C2/.

¹⁶⁴ USASpending.gov, Award Profile: Grant Summary, available at: https://www.usaspending.gov/award/ASST_NON_21DG11083112004_12C2 (Assistance transaction unique key: ASST_NON_21DG11083112004_12C2; award id: 21DG11083112004).

¹⁶⁵ See <https://www.fdacs.gov/Forest-Wildfire/Our-Forests/Land-Planning-and-Administration/Florida-Forest-Legacy-Program> (last accessed Aug. 24, 2023).

¹⁶⁶ 40 C.F.R. § 7.120(b)(2); 7 C.F.R. § 15.6.

within the 180-day filing period or a systematic policy or practice that operated within the 180-day period.”¹⁶⁷

As explained in sections III and IV. A. above, FFS internal practices and policies afford stringent protections from smoke and ash to largely white eastern communities while failing to provide tantamount protection to predominantly Black communities of color in the SGR. As detailed in section IV.A. above, specific examples of FFS authorizing burns with smoke and ash plumes reaching predominantly Black Glades communities shortly after denying burns at approximately the same locations when the wind was blowing toward the eastern communities apparently occurred on the following days within the last 180-days:

- **April 4, 2023**
- **May 5, 2023**

And an example of FFS authorizing burns with smoke and ash plumes reaching predominantly Black Glades communities on the same day as denying burns closer to the eastern communities, when the wind was blowing in their direction, occurred on:

- **March 13, 2023**

The FFS actions on the above dates within the last 180 days plainly constitute acts with discriminatory effects, made in accordance with practices/policies that have discriminatory effects.

More broadly, each time the FFS authorizes a cane field burn when the wind blows the plumes of smoke or ash toward the Glades communities, while authorizations for burns with plumes that would reach eastern communities are denied based on wind direction and speed, in accordance with its internal practices and policies, it furthers a systematic practice with discriminatory effects. As detailed in Attachment 7, on **35 different days between March 1, 2023 and May 30, 2023**, Sierra Club captured examples of FFS/FDACS-generated plume maps for FFS-approved burns showing plumes of smoke and/or ash overlapping with one or more of the three Glades communities.¹⁶⁸ These examples of burn approvals constituted actions with discriminatory effects, issued in accordance with FFS policies and practices having discriminatory effects, and these actions were within the last 180 days.

¹⁶⁷ EPA, Case Resolution Manual, at 8 (Jan. 2021), available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf.

¹⁶⁸ Attachment 7 – Sierra Club Analysis of Plume Maps for FFS Approved Burns.

D. Other Jurisdictional and Prudential Concerns

This complaint satisfies the jurisdictional and prudential considerations laid out in the applicable laws and regulations and EPA's Case Resolution Manual. This complaint is in writing and describes in sufficient detail the alleged discriminatory acts, policies, and practices in violation of civil rights laws and regulations.¹⁶⁹ It is filed with EPA and USDA by Sierra Club and its Stop the Burn-Go Green Campaign, whose mission is to work toward environmental justice and put an end to discriminatory sugarcane burning.¹⁷⁰ To our knowledge, this complaint contains unique allegations that have not been alleged in a pending or resolved complaint before EPA or USDA, another federal, state, or local agency, or a state or federal court.¹⁷¹

VI. Conclusion & Remedy Requested

For the reasons set forth above, Sierra Club asks EPA and USDA to thoroughly investigate whether the FFS is in compliance with the requirements under Title VI of the Civil Rights Act with regard to its actions approving and denying sugarcane burns in Palm Beach County. As a complainant, Sierra Club asks to be involved and play an active role in any resolution process. Sierra Club further requests that EPA issue preliminary findings and any recommendations for voluntary compliance, or otherwise resolve the complaint, within 180 days of the date of acceptance, pursuant to the consent decree issued by the U.S. District Court for the Northern District of California in *Californians for Renewable Energy v. US EPA*.¹⁷² Moreover, Sierra Club requests that EPA and USDA work with the FFS to develop a detailed Title VI compliance and implementation plan to end pre-harvest sugar field burning in Florida that includes buffers to protect the Glades communities and a schedule to phase out authorizations of pre-harvest sugar field burning.

¹⁶⁹ EPA Case Resolution Manual, *supra* note 167, at 6, 11.

¹⁷⁰ See 40 C.F.R. § 7.120(a); ECRCO Manual, *supra* note 167, at 10 ("If a complaint alleges the maintenance of a discriminatory policy by a recipient, the complainant need not identify individuals who were discriminated against within the filing period[.]").

¹⁷¹ See EPA Case Resolution Manual, *supra* note 167, at 13.

¹⁷² No. 4:15-CV-03292-SBA, 2018 WL 11434811, at *1 (N.D. Cal. June 13, 2018), *amended in part*, No. C 15-3292 SBA, 2020 WL 13490288 (N.D. Cal. Sept. 30, 2020).

Additional Concerns

EPA has failed to implement the Clean Air Act to meaningfully address the impacts of sugarcane burning on air quality and public health in the Glades. In 2015, Earthjustice, on behalf of Sierra Club, petitioned EPA to object to the renewal of Title V permits for sugar processing facilities.¹⁷³ Sierra Club asserted that the Title V permits at issue violated the Clean Air Act and its implementing regulations by failing to address emissions from the sugarcane field burning, despite the emission of hazardous air pollutants.¹⁷⁴ EPA did not object to the permits, and never even provided a response to Sierra Club; Sierra Club's petitions are still listed as "pending" in EPA's Title V Petition Database.¹⁷⁵

Moreover, EPA's monitoring of air quality in the Glades region has long been inadequate. The methods of monitoring air quality for Clean Air Act compliance do not accurately reflect impacts from sugarcane burning because they do not take frequent enough measurements to capture short-term spikes in pollution.¹⁷⁶ Federal regulators rely on 24-hour and annual averages to track the types of particulate matter emitted by cane burning; however, cane burning results in short-term spikes in particulate matter that last less than an hour.¹⁷⁷ Thus, EPA monitoring does not account for short-term pollution spikes from sugarcane burning, which can reach four times the average pollution levels in the area.¹⁷⁸ Air quality and public health experts who reviewed an analysis of the particulate matter air impacts from sugarcane burning in the SGR recommended that "policymakers should bolster air monitoring in the Glades, begin considering shorter-term spikes in pollution that are not currently built into federal air standards,

¹⁷³ See Petition Requesting the Administrator to Object to the Title V Operating Permit Renewal for the Okeelanta Sugar Mill and Refinery/Okeelanta Cogeneration Plant (July 27, 2015), available at https://www.epa.gov/sites/default/files/2015-08/documents/okeelanta_petition2015.pdf; Petition Requesting the Administrator to Object to the Title V Operating Permit Renewal for the United States Sugar Corporation's Clewiston Facility (Nov. 19, 2015), available at https://www.epa.gov/sites/production/files/2016-04/documents/us_sugar_petition2015.pdf.

¹⁷⁴ See *id.*; see also 40 C.F.R. § 70.5(c)(3)(i) (requiring that applications for Title V permits include "[a]ll emissions of pollutants for which the source is major, and all emissions of regulated air pollutants").

¹⁷⁵ EPA has a duty to object to a Title V permit if a petitioner can demonstrate that "the permit is not in compliance with the requirements of" the Clean Air Act or its implementing regulations. 42 U.S.C. § 7661d(b)(2); U.S. Environmental Protection Agency, Title VI Petition Database, available at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

¹⁷⁶ Black Snow Investigation, *supra* note 14.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

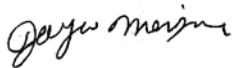
and study community exposure to these pollutants.”¹⁷⁹ EPA has not pursued any of these measures thus far.

In addition to the flawed methods of evaluating particulate matter air impacts, the equipment collecting the air quality data has also historically been unreliable and insufficient. In 2013, the Florida Department of Environmental Protection alerted EPA to the fact that the single air quality monitor in the SGR was malfunctioning and did not meet EPA’s standards for determining Clean Air Act compliance.¹⁸⁰ Despite this, the monitor was not replaced until 2021, and EPA did not take any action to ensure that air quality in the region was being monitored notwithstanding the malfunctioning technology.¹⁸¹

In addition to investigating the FFS burn authorization practices as requested above, Sierra Club urges EPA to consider how it can utilize its authorities under the Clean Air Act to better monitor, evaluate, and reduce or eliminate the effects of sugarcane burning on the Glades communities.

If you have questions regarding this submission, please contact Sierra Club attorneys Joya Manjur and Karimah Schoenhut.

Sincerely,



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¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

ATTACHMENTS

- Attachment 1 – Key Studies
- Attachment 2 – FFS Spreadsheets Showing Burn Authorization Denials from October 2022 through May 2023
- Attachment 3 – 2019 Description of FFS Burn Authorization Practices (*Coffie v. Florida Crystals Corporation*, 9:19-cv-80730-RS, ECF Docket No. 81-2, “Exhibit B” (filed Oct. 18, 2019)(obtained from pacer.gov)).
- Attachment 4 – 2020/2021 Description of FFS Burn Authorization Practices
- Attachment 5 – EJScreen Reports
- Attachment 6 – FFS Wind Direction Spreadsheets for Palm Beach County and Martin County
- Attachment 7 – Sierra Club Analysis of Plume Maps for FFS Approved Burns
- Attachment 8 – Sierra Club Analysis of FFS Wind Direction Records
- Attachment 9 – Sierra Club Analysis of Denials by Wind Direction
- Attachment 10 – Lists of Grants from EPA and USDA to FDACS

Exhibit 61

TITLE VI LEGAL MANUAL



CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF JUSTICE

ABOUT THIS DOCUMENT

The Civil Rights Division's *Title VI Legal Manual* provides an overview of Title VI legal principles. This document is intended to be an abstract of Title VI principles and issues; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI. For example, this manual does not address all issues associated with private enforcement. In addition, although the manual includes cases interpreting both Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where their interpretation overlaps with Title VI, the manual should not be considered to be an overview of any statute other than Title VI.

The Civil Rights Division periodically issues policy guidance, directives, or other memoranda to federal agencies regarding statutes the Division enforces. The manual discusses, as appropriate, current guidance documents and directives relating to Title VI. Persons referring to the manual periodically should check the Division's websites (www.usdoj.gov/crt and www.lep.gov) for guidance documents and directives issued subsequent to the publication of the manual. Comments on the manual, and suggestions as to future updates, including published and unpublished cases, may be addressed to:

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The Civil Rights Division issues the *Title VI Legal Manual* pursuant to its responsibility under Executive Order 12250, 28 C.F.R. pt. 41, app. A, to coordinate federal government compliance with the requirements of Title VI and other federal financial assistance statutes and to foster consistent and coordinated Title VI enforcement. The manual is intended only to provide general assistance to interested persons and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Finally, because the law changes frequently, the Civil Rights Division cannot guarantee that all information is current. Updates will be issued from time to time; please refer to the date issued for each chapter.

TITLE VI LEGAL MANUAL

- I. Introduction**
- II. Synopsis of Legislative History & Purpose**
- III. Department of Justice Role Under Title VI**
- IV. Interplay of Title VI with Other Laws**
- V. Defining Title VI**
- VI. Proving Discrimination- Intentional Discrimination**
- VII. Proving Discrimination- Disparate Impact**
- VIII. Proving Discrimination- Retaliation**
- IX. Private Right of Action & Individual Relief Through Agency Action**
- X. Employment Coverage**

I. INTRODUCTION

In 1964, after years of intensive work on the part of civil rights advocates and their supporters in Congress, President Lyndon B. Johnson signed the landmark Civil Rights Act of 1964. Included among the Civil Rights Act's eleven titles is Title VI, codified at 42 U.S.C. § 2000d et seq. In 1963, President John F. Kennedy explained the need for Title VI: "Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious." Title VI directly addresses the then-common practice of denying certain persons access to federally funded services, programs, and activities based on their race, color, or national origin.



At the March on Washington for Jobs and Freedom, on August 28, 1963, a demonstrator carries a placard calling for the passage of Title VI, "No U.S. Dough to Help Jim Crow Grow."

Specifically, Section 601 states the following:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.¹

¹ The Title VI Legal Manual provides an overview of Title VI legal principles. This document is intended to be an abstract of the general principles and issues that concern federal agency enforcement; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI. For example, this Manual does not address all issues associated with private enforcement. In addition, although the Manual refers to cases interpreting

The Civil Rights Division of the U.S. Department of Justice (DOJ) is responsible for coordinating the Title VI implementation and enforcement efforts of federal agencies pursuant to Executive Order 12250, 28 C.F.R.pt. 41, app. A. As part of its coordination role, the Division periodically issues policy guidance, directives, or other memoranda to federal agencies regarding Title VI. The Title VI Legal Manual summarizes current DOJ guidance documents and directives relating to Title VI. Persons referring to the manual should check the Division's websites (www.justice.gov/crt and www.lep.gov) for guidance documents and directives issued subsequent to the publication of this document.

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where their interpretation overlaps with Title VI, the Manual should not be considered to be an overview of any statute other than Title VI.

II: SYNOPSIS OF LEGISLATIVE HISTORY AND PURPOSE OF TITLE VI

The Civil Rights Act of 1964 was a product of the growing demand during the early 1960s for the federal government to launch a nationwide offensive against racial discrimination. In calling for its enactment, President John F. Kennedy stated:

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.

See H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

Title VI was not the first attempt to ensure that the federal government not finance discrimination based on race, color, or national origin. Beginning with Franklin Roosevelt, presidents issued Executive Orders prohibiting racial discrimination in hiring. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 720 & n.3 (1979) (White, J., dissenting).¹ Various prior Executive Orders prohibited racial discrimination in, for instance, the armed forces, employment by federally funded construction contractors, and federally assisted housing.² As Rep. Emanuel Celler, Chairman of the House Judiciary Committee and floor manager for the Civil Rights Act in the House of Representatives, noted:

In general, it seems rather anomalous that the Federal Government should aid and abet discrimination based on race, color, or national origin by granting money and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

It is for these reasons that we bring forth title VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions.

110 Cong. Rec. 2467 (1964) (*quoted in Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 330-31 (1978) (opinion of Marshall, J.)). Congress recognized the need for a statutory nondiscrimination

¹ *See also* *Cooper v. Aaron*, 358 U.S. 1 (1958); *Simkins v. Moses H. Cone Mem'l Hosp.*, 323 F.2d 959 (5th Cir. 1963).

² Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 26, 1948) (equal opportunity in the armed services); Exec. Order No. 10479, 18 Fed. Reg. 4899 (Aug. 13, 1953) (equal employment opportunity by government); Exec. Order No. 11063, 27 Fed. Reg. 11,527 (Nov. 20, 1962) (equal opportunity in housing), as amended by Exec. Order No. 12259, 3 C.F.R. § 307 (1981), *reprinted in* 42 U.S.C. § 3608.

provision to apply across-the-board “to make sure that the funds of the United States are not used to support racial discrimination.” 110 Cong. Rec. 6544 (statement of Sen. Humphrey).

Senator Humphrey, the Senate manager of the Civil Rights Act of 1964, identified several reasons for the enactment of Title VI. *Id.* First, several federal financial assistance statutes, enacted prior to *Brown v. Bd. of Education*, 347 U.S. 483 (1954), expressly provided for federal grants to racially segregated institutions under the “separate but equal” doctrine that *Brown* overturned. Although *Brown* made the validity of these programs doubtful, the decision did not automatically invalidate these statutory provisions.

Second, Title VI would eliminate any doubts that some federal agencies may have had about their authority to prohibit discrimination in their programs.

Third, through Title VI, Congress would “insure the uniformity and permanence to the nondiscrimination policy” in all programs and activities involving federal financial assistance. 110 Cong. Rec. 6544 (1964). Title VI would eliminate the need for Congress to debate nondiscrimination amendments in each new piece of legislation authorizing federal financial assistance.³ As stated by Representative Celler, “Title VI enables the Congress to consider the overall issue of racial discrimination separately from the issue of the desirability of particular Federal assistance programs. Its enactment would avoid for the future the occasion for further legislative maneuvers like the so-called Powell amendment.” *Id.* at 2468.⁴

Fourth, the supporters of Title VI considered it an efficient alternative to ponderous, time-consuming, and uncertain litigation. Prior legal challenges demonstrated that litigation involving private discrimination proceeded slowly, and the adoption of Title VI was seen as an alternative to such an arduous route. *See* 110 Cong. Rec. 7054 (1964) (statement by Sen. Pastore).

Further, federal funds continued to subsidize racial discrimination. For example, Senator Pastore addressed how North Carolina hospitals received substantial federal monies for construction, that the hospitals discriminated against Blacks as patients and as medical staff, and that, in the absence of legislation, judicial action was the only means to end these discriminatory practices.

That is why we need Title VI of the Civil Rights Act, H.R. 7152—to prevent such discrimination where Federal funds are involved.... Title VI is sound; it is morally right; it is legally right; it is constitutionally right.... What will it accomplish? It will guarantee that the money collected by colorblind tax

³ *See* 6 Op. O.L.C. 83, 93 (1982) (“The statutes [Title VI, Title IX, Section 504, and the Age Discrimination Act] ... [are] intended to apply to all programs or activities receiving federal financial assistance without being explicitly referenced in subsequent legislation. They should therefore be considered applicable to all legislation authorizing federal financial assistance ... unless Congress evidences a contrary intent.”)

⁴ The “Powell amendment” refers to the effort of Representative Adam Clayton Powell to add nondiscrimination clauses to federal legislation. *See* 110 Cong. Rec. 2465 (1964) (Statement by Rep. Powell).

collectors will be distributed by Federal and State administrators who are equally colorblind. Let me say it again: The title has a simple purpose—to eliminate discrimination in Federally financed programs.

Id.; see also *Simkins v. Moses H. Cone Mem'l Hosp.*, 323 F.2d 959, 969 (4th Cir. 1963) (federal provisions undertaking to authorize segregation by state-connected institutions are unconstitutional).⁵

President Lyndon Johnson signed the Civil Rights Act of 1964 into law on July 2, 1964, after more than a year of hearings, analyses, and debate. During the course of congressional consideration, Title VI was one of the most debated provisions of the Act.

⁵ At issue in *Simkins* was a provision of the Hill-Burton Act (Hospital Survey and Construction Act), 60 Stat. 1041 (1946), as amended, 42 U.S.C. § 291e(f), which “authorize[d] the construction of hospital facilities and the promotion of hospital services with funds of the United States on a ‘separate-but-equal’ basis.” *Simkins*, 323 F.2d at 961. The Act included a general nondiscrimination provision, but further stated that “‘an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group;....’” *Id.* at 969 (quoting 42 U.S.C. § 291e(f)).

III: DEPARTMENT OF JUSTICE ROLE UNDER TITLE VI

Title VI authorizes and directs federal departments and agencies that extend financial assistance to issue rules, regulations, or orders that effectuate the prohibition on discrimination on the basis of race, color, or national origin. Title VI assigns the Department of Justice (DOJ) two key government-wide roles: coordinator of federal agency implementation and enforcement, and legal representative of the United States.¹

A. Ensuring Consistent and Effective Enforcement Across the Federal Government

Under Executive Order 12250, 28 C.F.R. pt. 41, app. A, the President tasked the Attorney General to “coordinate the implementation and enforcement by Executive agencies” of Title VI, Title IX, and Section 504. Executive Order 12250 further provided that the Attorney General coordinate

any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

Exec. Order No. 12250 § 1-201. Accordingly, DOJ is charged with ensuring the consistent and effective implementation of Title VI across the federal government.

Initially, the Title VI coordination responsibility was assigned to a President’s Council on Equal Opportunity, which was created by Executive Order 11197, 3 C.F.R. 1964-1965 Comp. 278 (Feb. 5, 1965). The Council was abolished after six months and the responsibility was reassigned to the Attorney General pursuant to Executive Order 11247. 3 C.F.R. 1964-1965 Comp. 348 (Sept. 24, 1965). Executive Order 11247 provided that the Attorney General was to assist federal departments and agencies in coordinating their Title VI enforcement activities and in adopting consistent, uniform policies, practices, and procedures. During this period, DOJ issued its “Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, which are still in force today.

In 1974, the President signed Executive Order 11764, designed “to clarify and broaden the role of the Attorney General with respect to Title VI enforcement.” Exec. Order No. 11764, 3A C.F.R. § 124 (1974 Comp.). The Order gave the Attorney General broad power to ensure the effective and coordinated enforcement of Title VI. In 1976 and pursuant to this Executive Order,

¹ The DOJ has a third role, of course: ensuring that its own recipients of funding abide by their Title VI (and other federal funding statute) obligations. This Manual chapter focuses on the Department’s unique Title VI obligations.

DOJ promulgated its Coordination Regulations describing specific implementation, compliance, and enforcement obligations of federal funding agencies under Title VI. *See* 28 C.F.R.

§§ 42.401-42.415.² Every agency that extends Title VI covered federal financial assistance is subject to the Coordination Regulations as well as Title VI guidelines and directives issued by DOJ.

On November 2, 1980, the President signed Executive Order 12250, which directed the Attorney General to oversee and coordinate the implementation and enforcement responsibilities of the federal agencies pursuant to Title VI. For the first time, and notwithstanding that no rules, regulations, or orders of general applicability “shall become effective unless and until approved by the President,” 42 U.S.C. § 2000d-1, the President delegated approval power over regulations to the Attorney General. Exec. Order No. 12250, at § 1-1. This Executive Order further charges the Attorney General with specific Title VI oversight responsibilities, which, with the exception of the approval of agency regulations implementing Title VI and the issuance of coordinating regulations, the Attorney General has delegated to the Assistant Attorney General for Civil Rights:

- Review existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those that are inadequate, unclear, or unnecessarily inconsistent (§ 1-202);
- Develop specific standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews (§ 1-203);
- Issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to DOJ of enforcement where there is noncompliance (§ 1-204);
- Establish and implement a schedule for the review of the agencies’ regulations that implement Title VI and related statutes (§ 1-205);
- Establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements for Executive agencies; for the sharing and exchange of agency compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; and for the development of cooperative programs with state and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance (§ 1-206);
- Initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of Title VI and related statutes (§ 1-207).

² These regulations were amended slightly after the signing of Executive Order 12250 in 1980 to identify correctly the applicable Executive Order, but in substance they have not been changed since being issued in 1976.

Under the Attorney General's delegation, the Civil Rights Division is responsible for reviewing and providing clearance of subregulatory guidance interpreting Title VI. While each federal agency extending federal financial assistance has primary responsibility for implementing Title VI with respect to its recipients, overall coordination in identifying legal and operational standards, and ensuring consistent application and enforcement, rests with DOJ's Civil Rights Division. The section within the Civil Rights Division that provides Title VI assistance and oversight to agency civil rights offices is the Federal Coordination and Compliance Section (FCS).

The Civil Rights Division employs a variety of strategies for meeting its coordination mandate, some of which are discussed in more detail below.

1. Department of Justice Clearance Authority

Executive Order 12250 provides that the Attorney General must approve federal regulations that effectuate Title VI (and other civil rights statutes, including Title IX and Section 504). 42 U.S.C. § 2000d-1; Exec. Order No. 12250 at § 1-1. This includes the provisions of comprehensive regulations that govern, in part, a federal agency's Title VI implementation or enforcement. For example, if a federal agency drafts a rule governing administrative complaints, the rule is subject to DOJ clearance requirements to the extent it affects how Title VI may be enforced.

In addition, federal implementing directives (whether in the nature of regulations or implementing guidance) that agencies issue under any of the laws covered by Executive Order 12250 are "subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect." *Id.* § 1-402. These documents include regulations issued to effectuate statutes that "provide in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." *Id.* § 1-201(d). The authority to review such guidance documents has been delegated to the Assistant Attorney General for Civil Rights. 28 C.F.R. § 0.51(a) ("The Assistant Attorney General in charge of the Civil Rights Division shall, except as reserved herein, exercise the authority vested in and perform the functions assigned to the Attorney General by Executive Order 12250 ('Leadership and Coordination of Nondiscrimination Laws'")).

The DOJ clearance role is critical to its responsibility to ensure consistent and effective enforcement. Agencies should contact FCS early in the development of documents encompassed within the DOJ clearance requirements.

2. Legal and Policy Guidance

DOJ develops formal and informal guidance regarding implementation of Title VI, including legal interpretations of the statute and regulations. DOJ, including the Civil Rights Division, has issued guidance in a range of formats, including notice-and-comment rulemaking; directives; frequently asked questions; tips and tools documents; promising practices documents; and correspondence to federal agencies, recipients, or beneficiaries. These documents generally are sent directly to interested stakeholders and also made available online. Because of DOJ's unique government-wide coordination function, such interpretations of Title VI are entitled to special deference from the courts. *See, e.g., United States v. Maricopa Cty.*, 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012) (citing *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 634 (1984); *Andrus v. Sierra Club*, 442 U.S. 347, 357-58 (1979)).³

DOJ's legal guidance review function plays a particularly important role in ensuring consistency of legal interpretation across the federal government. For example, where two agencies have conflicting interpretations of what constitutes federal financial assistance under Title VI, DOJ's coordination role authorizes it to determine the final government-wide position on the matter.

3. Legal Counsel and Technical Assistance

DOJ, through the Civil Rights Division's FCS, provides ongoing technical assistance, including legal and policy review, to federal funding agencies. On an almost daily basis, the FCS staff answers questions from staff working in other federal agencies. FCS also provides direct assistance to individual agencies, including legal or technical assistance on novel or complex investigations.

FCS also conducts periodic in-depth reviews of agency Title VI enforcement programs, including both Case Assistance Reviews (CAR) and Technical Assistance Reviews (TAR). Section 1-302 of Executive Order 12250 directs the Attorney General periodically to evaluate the implementation of the nondiscrimination provisions of the laws the Executive Order covers, including Title VI; advise the heads of the agencies concerned on the results of those

³ Federal civil rights agency interpretations of their own Title VI regulations are entitled to "substantial deference" where they "reflect its 'fair and considered judgment on the matter in question.'" *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 96-97 (2d Cir. 2012) (affording deference to U.S. Department of Education policy guidance interpreting Title IX); *see also Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (agency's permissible interpretation of its own regulation normally "must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation"); *T.E. v. Pine Bush Cent. Sch. Dist.*, No. 12-CV-2303 KMK, 2014 WL 5591066, at *18 (S.D.N.Y. Nov. 4, 2014) ("agency interpretations of ambiguities in an agency's own regulation merit 'substantial deference'"). Because multiple agencies provide federal financial assistance to a wide variety of recipients, many of which issue guidance and other similar documents, the coordination role delegated to the Civil Rights Division under 28 C.F.R. § 0.51(a) seeks to ensure consistent federal government interpretation of Title VI and other federal financial assistance statutes.

evaluations; and provide recommendations for needed improvement in implementation or enforcement. A Title VI CAR involves a holistic assessment of an agency's administrative case docket in order to identify the critical enforcement matters requiring legal assistance and potential preparation for judicial enforcement, identify and develop solutions to any recurring barriers to effective enforcement, and inform the development of DOJ's technical assistance and training programs. A Title VI TAR is a focused assessment of selected aspects, functions, or issues concerning an agency's Title VI implementation and enforcement. A TAR is designed to yield helpful and practical recommendations to strengthen and improve an agency's Title VI enforcement. FCS undertakes both types of reviews cooperatively with the agency.

4. Coordination and Clearinghouse

When a complainant files a complaint either with multiple funding agencies that fund a particular recipient or a complaint that implicates multiple agencies, FCS sometimes coordinates the investigation. FCS's role may involve bringing together representatives from the various agencies to ensure that they approach and conduct their investigations in a consistent manner. In other instances, FCS may partner with an agency in an investigation. In addition, FCS has significant government-wide coordination responsibilities to act as a clearinghouse for review and referral of mail from the public; non-governmental organizations; federal, state, and local agencies; and others concerning civil rights matters. Agencies should contact FCS when they receive complaints as to which they do not have jurisdiction and do not know where the complaint should be forwarded.

DOJ also leads the Title VI Interagency Working Group, a forum for federal civil rights leadership, staff, and counsel to leverage resources, training, promising practices, and problem-solving opportunities with the goal of creating more effective and consistent Title VI enforcement programs across government.

5. Oversight and Coordination

In implementing Executive Order 12250, DOJ periodically evaluates Title VI implementation as well as the implementation of the other nondiscrimination provisions of the laws that the Order covers. DOJ does this in a variety of ways, including requiring agencies that administer federal financial assistance to submit reports to FCS describing their past year's performance and upcoming plans to implement Title VI. DOJ also can request information on the major components of an agency's civil rights enforcement program, including budget and staffing for external civil rights activities, complaint investigations, pre-award and post-award compliance reviews, regulatory and policy development, outreach and technical assistance, and training. Pursuant to Executive Order 12250, Section 1-401, agencies must cooperate with any such requests. Information gathered in these reports plays an essential role in refining DOJ's coordination and compliance activities.

B. Judicial Enforcement of Title VI

DOJ also serves as the federal government's litigator. Title VI authorizes DOJ to enforce Title VI through the filing of civil actions. DOJ, on behalf of Executive agencies, may seek injunctive relief, specific performance, or other remedies when agencies have referred determinations of recipients' noncompliance to DOJ for judicial enforcement. DOJ may also file statements of interest and amicus briefs regarding Title VI issues in private litigation. Litigation is assigned to DOJ's Civil Rights Division. In addition, DOJ is responsible for representing agency officials should they be named as defendants in private Title VI litigation.

A 1965 guidance, now codified at 28 C.F.R. § 50.3, specified that court enforcement may be obtained through the following:

(1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements of compliance, or desegregation plans filed pursuant to agency regulations; (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination; and (3) initiation of or intervention or other participation in, a suit for other relief designed to secure performance.

31 Fed. Reg. 5292, 5292 (Apr. 2, 1966).⁴ In subsequent regulations, agencies were directed, upon failure to obtain voluntary compliance from a noncomplying program or activity, to "initiate appropriate enforcement procedures" in accordance with the 1965 Title VI guidelines. 41 Fed. Reg. 52,669 (Dec. 1, 1976) (now codified at 28 C.F.R. § 42.411). In this regard, the Coordination Regulations direct agencies to advise DOJ if they are unable to achieve voluntary compliance and to request that DOJ assist in seeking resolution of the matter. *Id.* § 42.411(a). Agencies should submit Title VI and other civil rights matters for litigation if they cannot be resolved administratively (that is, when the agency determines that informal resolution or fund termination is not a viable solution). FCS provides assistance to agencies in making determinations of noncompliance, including providing pre-enforcement legal counsel when it appears it may be difficult to obtain a voluntary resolution.

⁴ In the 1965 guidance, the Department identified three alternative measures that could be undertaken to secure compliance: (1) court enforcement, including "initiation of or intervention or other participation in, a suit for other relief designed to secure performance;" (2) administrative action; and (3) other efforts to induce voluntary compliance. *Id.*

IV: INTERPLAY OF TITLE VI WITH TITLE IX, SECTION 504, THE FOURTEENTH AMENDMENT, AND TITLE VII

Title VI prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. Specifically, Title VI provides as follows:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. Title VI served as the model for several subsequently promulgated statutes that prohibit discrimination on other grounds in federally assisted programs or activities, including Title IX (sex discrimination in education programs) and Section 504 (disability discrimination). *See U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 600 n.4 (1986); *Grove City Coll. v. Bell*, 465 U.S. 555, 566 (1984) (Title IX was patterned after Title VI); *Consol. Rail Corp. v. Darrone*, 465 U.S. 624 (1984) (Section 504 patterned after Titles VI and IX).¹ Accordingly, courts have “relied on case law interpreting Title VI as generally applicable to later statutes.” *Paralyzed Veterans*, 477 U.S. at 600 n.4.

The three statutes do not treat all issues identically. For example, Title VI statutorily restricts claims of employment discrimination to instances where a “primary objective” of the financial assistance is to provide employment. 42 U.S.C. § 2000d-3. An employment discrimination claim against a recipient of federal financial assistance that otherwise might raise a Title VI issue must be brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., if a “primary objective” is not employment. No such restriction applies to Title IX or Section 504. *See N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 530 (1982) (“[T]he legislative history thus corroborates our reading of the statutory language and verifies the Court of Appeals’ conclusion that employment discrimination comes within the prohibition of Title IX.”); *Bentley v. Cleveland Cty. Bd. of Comm’rs*, 41 F.3d 600 (10th Cir. 1994) (Section 504 claim alleging discriminatory termination of former employee).

Courts also have held that Title VI adopts or follows the Fourteenth Amendment’s standard of proof for intentional discrimination, *see Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 412-18 (1978); and, generally, the Title VII standard of proof for disparate impact. *See Guardians Ass’n v. Civil Serv. Comm’n of City of New York*, 463 U.S. 582, 639 (1983); *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1405 n.11, 1407 n.14 (11th Cir. 1993) (*see, infra*, Section V, ch. 1). Accordingly, cases under these constitutional and statutory provisions may shed light on the Title VI analysis in a given situation.

¹ In addition, Title II of the Americans with Disabilities Act of 1990, as amended, uses Title VI enforcement procedures through reference to the process noted in Section 504. 42 U.S.C. § 12131.

Finally, cases decided under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, 42 U.S.C. § 3601 et seq., may also be instructive regarding the disparate impact analysis under Title VI.

V: DEFINING TITLE VI**A. Who Is Protected Under Title VI?**

Title VI protects *everyone* who is “in the United States” (which is separately defined below).

NO PERSON in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI states “no person” shall be subject to discrimination because of race, color, or national origin. It is well-settled that the word “person” includes citizens and noncitizens alike and that undocumented individuals in the United States are protected from discrimination on the basis of race, color, and national origin. The Supreme Court has addressed “person” in the context of challenges brought under the Fifth and Fourteenth Amendments. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202 (1982); *Mathews v. Diaz*, 426 U.S. 67 (1976). The Court has held that undocumented individuals are considered “persons” under the equal protection and due process clauses of the Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210–11; *Mathews*, 426 U.S. at 77.¹ These cases provide persuasive authority as to the scope of “persons” protected by Title VI because the Supreme Court has found that Title VI is limited by the Fifth and Fourteenth Amendments. *See Guardians Ass’n v. Civil Serv. Comm.*, 463 U.S. 582, 589–90 (1983); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978).²

Under Title VI, a private entity is also a “person” when it receives federal financial assistance from a recipient and may bring suit alleging discriminatory allocation of funds. Similarly, a private entity also is a “person” when it seeks to contract with a recipient.

Where a recipient receiving federal financial assistance enters the marketplace seeking to contract for goods or services, it cannot discriminate among entities seeking to do business with it. In *Jacobson v. Delta Airlines*, 742 F.2d 1202, 1209 (9th Cir. 1984), the court noted that a contractor, corporate or individual, may be deemed a “person” and covered by Title VI. *See, e.g., Hudson Valley Freedom Theater, Inc. v. Heimbach*, 671 F.2d 702, 705–06 (2d Cir. 1982) (holding that corporate plaintiffs had standing to pursue racial discrimination claims pursuant to Title VI); *Bogdan v. Housing Auth. of Winston-Salem*, No. 1:05CV00568, 2006 WL 3848693 *6 (M.D.N.C. Dec. 29, 2006) (finding that Title VI covered a contractor if he has a logical nexus to

¹ In *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973), a Title VII case, the Court ruled that an employer’s distinction between a citizen and noncitizen for employment purposes did not violate the prohibition against national origin discrimination. It also noted that because the employer did not discriminate among the citizens it did hire based on national origin, it did not violate Title VII. *Id.* at 93 n.5.

² Fifth and Fourteenth Amendment equal protection claims are coextensive and “indistinguishable from each other.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 217 (1995).

a federally funded program, as a beneficiary, applicant, or participant in the program); *Carnell Const. Corp. v. Danville Redev. and Hous. Auth.*, 745 F.3d 703, 715 (4th Cir. 2014) (Carnell has Title VI standing because its president and sole shareholder is African–American, it was eligible for consideration as a contractor on a federally funded public project, and it alleged that defendants discriminated against it based on race), *cert. denied*, 135 S. Ct. 357 (2014); *see also United States v. Harris Methodist Ft. Worth*, 970 F.2d 94, 97 (5th Cir. 1992) (holding that Title VI protected from discrimination private physicians who were neither beneficiaries nor employees of the hospital); *J.A. Croson Co. v. City of Richmond*, 488 U.S. 469 (1989) (corporate standing to sue for race discrimination under the Equal Protection Clause).

In contrast, an entity’s receipt of a procurement contract with the federal government does not subject the contractor to coverage under Title VI. *See, e.g., Fredricks v. City of New York*, No. 12 CIV. 3734, 2013 WL 839584, at *5 (S.D.N.Y. Mar. 6, 2013); *Tolliver v. Xerox Corp.*, 918 F.2d 1052, 1060 (2d Cir. 1990) (receipt of Army procurement contracts does not render the company a “program or activity receiving federal financial assistance”).

Once an entity receives federal financial assistance, jurisdiction under Title VI attaches and if the recipient’s program includes selection of contractors to carry out its various functions, then Title VI covers that selection process. For example, if a state agency receives funds pursuant to a federal program to establish and operate homeless shelters and uses some of the federal money to hire a food service company to provide meals in the shelter, the food service contractor is a participant in the homeless shelter program. Title VI would operate not only to ensure nondiscrimination against homeless people—the ultimate beneficiaries—but would also require the recipient to select the food service contractor in a nondiscriminatory manner. An essential purpose of Title VI—to prevent discrimination—would be undermined if it were limited to ensuring that a homeless shelter was operated in a nondiscriminatory manner, while the process by which such a facility is constructed, supplied, and serviced were free of any such restraints.

A number of courts have held that cities, political subdivisions, and other state instrumentalities are not Title VI-defined “persons” and do not have Title VI standing to bring suit against the state. In *United States v. Alabama*, 791 F.2d 1450 (11th Cir. 1986), the United States, later joined by intervenors, Alabama State University (ASU), a majority-black institution, along with faculty, staff, students, and graduates of ASU, filed suit against the state of Alabama, state educational authorities, and all four-year state institutions of higher education, claiming that Alabama operated a dual system of segregated higher education. Based on the language of Title VI and a review of its legislative history, the court concluded that “[n]othing in Title VI or its legislative history suggests that Congress conceived of a state instrumentality as a ‘person’ with rights under this statute” and the court “decline[d] to infer such a right of action by judicial fiat.” *Id.* at 1456–57. The court further stated there are other avenues of recourse to remedy Title VI violations, including a private right of action for individuals under Title VI and Title VI’s

comprehensive scheme of administrative enforcement. *Id.* at 1456, (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97 (1978)). *See also Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 442 F. App'x 681, 688 (3d Cir. 2011) (explaining that a charter school did not meet definition of “person”); *Dekalb Cty. Sch. Dist. v. Schrenko*, 109 F.3d 680, 689 (11th Cir. 1997) (noting that a state created political subdivision has no standing to bring a Title VI claim against the state). Nevertheless, this should not preclude entities such as a school district or other political subdivision from bringing a Title VI administrative complaint either on its own behalf or on behalf of its students or other constituents. It also would not preclude individual students or other constituents from bringing a private Title VI suit against the state recipient in appropriate cases. *See, e.g., Coalition for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n*, 977 F. Supp. 2d 507, 519–20 (D. Md. 2013).

B. Where Does Title VI Apply?

Title VI states that no person “in the United States” shall be discriminated against based on race, color, or national origin by an entity receiving federal financial assistance. The phrase “in the United States” is intended to be broadly inclusive. Agency Title VI regulations, including those of the Department of Justice (DOJ), define “recipients” or “United States” to encompass, *inter alia*, territories and possessions.³

No person **IN THE UNITED STATES** shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Although no court has addressed the scope of “United States” or the validity of regulations that extend coverage to territories and possessions, cases interpreting the Fifth and Fourteenth Amendments again provide guidance in this analysis. Title VI covers all areas under the sovereignty of the United States that fall within the combined jurisdiction of the Fifth and Fourteenth Amendments. By separate covenant, Title VI applies to the Trust Territories of the Pacific Islands, which includes the Commonwealth of the Northern Marianas Islands. *See Temengil v. Trust Territory of the Pac. Islands*, No. 81-0006, 1983 WL 30363, at *32 (D.N. Mar. I. Mar. 22, 1983), *rev'd in part, aff'd in part on other grounds*, 881 F.2d 647 (9th Cir. 1989); *see also Oden v. N. Marianas Coll.*, 440 F.3d 1085, 1088 (9th Cir. 2006) (applying Title IX analysis in a case from the Northern Marianas Islands).

Whether Title VI applies extraterritorially presents a separate question. It is a “longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’” *EEOC v. Arabian*

³ Individual agency descriptions of “United States” can be found in the following regulations, *see, e.g.*, 24 C.F.R. § 1.2(d) (HUD); 28 C.F.R. § 42.102(b) (DOJ); 29 C.F.R. § 31.2(j) (DOL); 38 C.F.R. § 18.13(d) (VA); 45 C.F.R. § 80.13(e) (HHS); and 49 C.F.R. § 21.23(f) (DOT).

American Oil Co., 499 U.S. 244, 248 (1991) (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949)). Title VI may apply to discriminatory conduct outside the United States in certain narrow circumstances, depending on how much control the recipient exercises over the overseas operation and how integral the overseas operation is to the recipient's program in the U.S.

To date, however, the only application of extraterritoriality appears in cases involving schools and study abroad programs. For example, a district court ruled that Title IX protects students who participate in study abroad programs through American universities. *King v. Bd. of Control of E. Mich. Univ.*, 221 F. Supp. 2d 783, 790–91 (E.D. Mich. 2002) (because study abroad programs have become an integral part of college education, equality of opportunity in study abroad programs is “unquestionably mandated by Title IX” and requires extraterritorial application of Title IX); *but see Phillips v. St. George's Univ.*, No. 07-CV-1555, 2007 WL 3407728, at *5 (E.D.N.Y. 2007) (Title IX does not apply where the plaintiff was attending a school in Grenada and alleged that she was harassed by a school employee in Grenada and that the school employees ignored her complaints in Grenada); and *Archut v. Ross Univ. Sch. of Veterinary Med.*, No. 10-1681, 2012 WL 5867148 (D.N.J. 2012) (Section 504 of the Rehabilitation Act does not apply to a foreign educational institution even if it is receiving federal financial aid and has a U.S. parent). Whether the rationale of these cases might be applicable to other matters remains to be determined.

C. Federal Financial Assistance

Title VI states that no program or activity receiving “Federal financial assistance” shall discriminate against individuals based on their race, color, or national origin. Section V.E presents a detailed discussion of “program or activity.” The focus here is on what is and what is not federal financial assistance; why it is necessary to establish that a recipient is receiving federal financial assistance; and things to consider when conducting a Title VI investigation or review.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving **FEDERAL FINANCIAL ASSISTANCE**.

1. What is Federal Financial Assistance?

The clearest example of federal financial assistance is the award or grant of money. An agency also might provide federal financial assistance in nonmonetary form; that is, “whatever thing of value is extended by the grant statute.” *See United States Dep’t of Transp. v. Paralyzed Veterans*, 477 U.S. 597, 607 n.11 (1986) (“Although the word ‘financial’ usually indicates ‘money,’ federal financial assistance may take nonmoney form,” citing *Grove City Col. v. Bell*, 465 U.S.

555, 564–65 (1984)). As discussed below, federal financial assistance may include the use or rental of federal land or property at below market value, federal training, a loan of federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the federal government at market value, or programs that provide direct benefits.⁴ Note, however, that federal financial assistance is contractual in the sense that the recipient agrees to use the assistance in a manner consistent with the terms of the award and, in most instances, should have signed an assurance agreement binding it to comply with certain terms and conditions.

It is important to remember that the availability of remedies may depend on the timing of an entity's receipt of federal financial assistance. For example, while past funding alone may not support prospective relief such as an injunction, past funding may support a claim for backward-looking relief, such as back pay, restitution, or damages. *See Huber v. Howard Cty.*, 849 F. Supp. 407, 415 (D. Md. 1994) (Section 504 matter, finding that the recipient received federal financial assistance during the time of plaintiff's employment and discharge); *James v. Jones*, 148 F.R.D. 196, 201 (W.D. Ky. 1993) (state "does not presently receive [federal] funds, but ... has appealed its suspension from the program and it maintains its hope of receiving future funds"). Moreover, the amount of federal financial assistance does not affect Title VI coverage. *See, e.g., K.H. v. Vincent Smith Sch.*, CV 06-0319(ERK) (JO), 2006 WL 845385, *11 (E.D.N.Y. Mar. 29, 2006) (court could find "no support in the law for the *de minimis* exception the [recipient] School advocates").⁵

Agency regulations use similar, if not identical, language to define Federal financial assistance:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and

⁴ *See* Letter from Robert Kennedy, Attorney General, to Hon. John Sherman Cooper (April 29, 1964), *reprinted in* 110 Cong. Rec. 10075, 10076 (1964) ("Title VI does not apply to procurement contracts, or to other contracts which do not involve financial assistance by the United States.").

⁵ One court ruled that the entity must receive more than *de minimis* federal assistance. *See Marshall v. Sisters of Holy Family Nazareth*, 399 F. Supp. 2d 597, 602–03 (E.D. Pa. 2005) (finding school's participation in a national school lunch program where only one student received a free lunch and the school received no proceeds from the sale did not constitute financial assistance). In our view, however, the sounder approach is that the amount of federal financial assistance is not relevant. Rather, what is important is whether the recipient receives federal assistance in some form or amount and thus becomes obliged to ensure that it acts in a nondiscriminatory manner.

- (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. § 42.102(c) (Department of Justice regulations).

a. Grants and loans of federal funds

The clearest example of Title VI-covered federal financial assistance is money provided through federal grants, cooperative agreements, and loans. An entity may receive grant money directly from an agency or indirectly through another entity. In either case, the direct recipient as well as the secondary or subrecipient are considered to have received federal funds. In other instances, the funding may be directed to the funding beneficiaries but another entity ultimately receives the funding. For example, a college or university receives federal financial assistance indirectly where it enrolls United States military veterans for whom the federal government provides tuition payments. Although federal payments go directly to the veterans and indirectly to the university, the university is receiving federal financial assistance that neither it nor the students would have received but for students' enrollment and entitlement. *See Grove City Coll. v. Bell*, 465 U.S. 555, 564 (1984) (*superseded by statute on other grounds* by Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988)); *Spann ex rel. Hopkins v. Word of Faith Christian Ctr. Church*, 589 F. Supp. 2d 759, 767 (S.D. Miss. 2008) (state may be recipient of the funds but it is not the ultimate recipient, serving as a conduit of funds earmarked for payment to the child care provider).

b. Federal property

As set forth in the regulations, federal financial assistance may be in the form of a grant or donation of land or use (rental) of federal property for the recipient at no or reduced cost. It also could be in the form of other tangible goods. *See Marable v. Ala. Mental Health Bd.*, 297 F. Supp. 291, 295–96 (M.D. Ala. 1969) (defendant received federal financial assistance in the form of, among other things, surplus food commodities from the U.S. Department of Agriculture through the Food Distribution Program and surplus property under the Federal Property and Administrative Services Act of 1949); *Kamen v. Am. Tel. & Tel. Co.*, 791 F.2d 1006, 1013 (2d Cir. 1986) (plaintiff made plausible claim that defendant “received federal financial assistance in the form of services of federal personnel or the use of Government property in the form of satellite launching facilities and technology or, perhaps, federal lands”); *Staley v. Nat’l Capital Area Council, Boy Scouts of Am.*, No. RWT 10CV2768, 2011 WL 2416724, at *12 (D. Md. June 9, 2011) (discovery allowed to determine whether defendant received federal financial assistance because it was allowed to use federal land at no cost for scouting activities). Ownership of land, rental property, or other tangible goods is considered federal financial assistance if the recipient does not pay or pays less than market value. Recipients typically sign assurance documents at the

time the assistance is conferred and agree that assistance is ongoing for as long as the land or property is being used for the original or a similar purpose to that for which the assistance was intended. *E.g.*, 28 C.F.R. § 42.105. Moreover, regulations bind the successors and transferees of this property as long as the original purpose or a similar objective is pursued. *Id.* Thus, if at the time of the alleged discriminatory act, the recipient uses the land or rents the property for the same or similar purpose, the recipient is receiving federal financial assistance, irrespective of when the land was granted or donated. For example:

- Sixteen years ago, the Department of Defense (DOD) donated land from a closed military base to a state as the location for a new prison. The prison has been built and currently houses 130 inmates. Black and Hispanic inmates complain that they tend to be in long-term segregation more often than white inmates, and allege racial discrimination by the prison administrators. Because the state still uses the DOD-donated land for its original (or similar) purpose, the state is still receiving federal financial assistance. *See* 32 C.F.R. § 195.6.
- A police department has a branch office located in a housing project built, subsidized, and operated with Department of Housing and Urban Development funds. The police department is not charged rent. The police department is receiving federal financial assistance and is subject to Title VI.
- A railroad company receives federal funds to rehabilitate railroad crossings the railroad company owns. The railroad benefits from receiving federal funds because federal money is being used to pay for repairs to the railroad's property that the railroad otherwise would have had to pay for itself. Because the railroad benefits from the federal funds through the upgrade to its own property, the railroad company is receiving federal financial assistance and is covered by Title VI. *See Moreno v. Consol. Rail Corp.*, 99 F.3d 782 (6th Cir. 1996) (Section 504 case). Note that a railroad that is paid under contract by the federal government to maintain federal property may not be covered under Title VI.

c. Detail of federal personnel

Under the Intergovernmental Personnel Act of 1970, federal agencies may allow a temporary assignment of personnel (also known as a detail) to state, local, and Indian tribal governments, institutions of higher education, federally funded research and development centers, and certain other organizations for work of mutual concern and benefit. *See* 5 U.S.C. § 3372. This detail of federal personnel to a state or other entity is considered federal financial assistance even if the entity reimburses the federal agency for some (but not all) of the detailed employee's federal salary. *See Paralyzed Veterans*, 477 U.S. at 612 n.14. For example, two research scientists from

the National Institute of Health are detailed to a research organization for two years to help research treatments for cancer. NIH pays for three-fourths of the salary of the two detailed employees, while the organization pays the remaining portion. The research organization is receiving federal financial assistance because the federal government is paying a portion of the salary of the detailed federal employees. The research organization is subject to Title VI.

d. Tax Benefits

Typical tax benefits—tax exemptions, tax deductions, and most tax credits—are not considered federal financial assistance. Unlike grants, most typical tax benefits are not included in the statutory or regulatory definitions of federal financial assistance because they are not contractual in nature. *See, e.g.*, 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.102(c); 31 C.F.R. § 28.105. Most courts that have considered the issue have concluded that typical tax benefits are not federal assistance. *See, e.g., Paralyzed Veterans of Am. v. Civil Aeronautics Bd.*, 752 F.2d 694, 708–09 (D.C. Cir. 1985); *Johnny’s Icehouse, Inca v. Amateur Hockey Ass’n of Ill., Inc.*, 134 F. Supp. 2d 965, 971–72 (N.D. Ill. 2001); *Chaplin v. Consol. Edison Co.*, 628 F. Supp. 143, 145–46 (S.D.N.Y. 1986).

However, while these cases suggest that typical tax benefits are not federal financial assistance, a few courts have found instances where a tax benefit would be considered federal financial assistance. *See McGlotten v. Connally*, 338 F. Supp. 448, 462 (D.D.C. 1972) (provision of a tax deduction for charitable contributions is a grant of federal financial assistance within the scope of the 1964 Civil Rights Act); *see also Fulani v. League of Women Voters Educ. Fund*, 684 F. Supp. 1185, 1192 (S.D.N.Y. 1988), *aff’d*, 882 F.2d 621 (2d Cir. 1989) (jurisdiction under Title VI and Title IX because “the League receives federal assistance indirectly through its tax exemption and directly through grants from the Department of Energy and the EPA.”); *M.H.D. v. Westminster Sch.*, 172 F.3d 797, 802 n.12 (11th Cir. 1999) (although not deciding the issue, the court observed that “appellant’s allegation that tax-exempt status constitutes ‘Federal financial assistance’ is neither immaterial nor wholly frivolous ... [and that] appellant contends [that] a direct grant and a tax exemption should be treated the same; because a grant constitutes ‘Federal financial assistance’ under Title IX, tax-exempt status also should satisfy this element of the statute”). Other courts have ruled otherwise, however, stating that assistance requires the transfer of funds or something of value to a recipient. *See, e.g., Bachman v. Am. Soc. of Clinical Pathologists*, 577 F. Supp. 1257, 1264 (D.N.J. 1983); *Johnny’s Ice House*, 134 F. Supp. 2d at 972.

e. Training

The regulations also state that federal financial assistance can be in the form of any federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance. A typical example is training conducted by federal personnel. For example, a city

police department sends several police officers to training at the FBI Academy at Quantico without cost to the city. The police department is considered to have received federal financial assistance. *See Delmonte v. Dep't of Bus. & Prof'l Regulation*, 877 F. Supp. 1563, 1566–67 (S.D. Fla. 1995) (training state officers received from DEA, FBI and DOT constituted receipt of federal financial assistance pursuant to Section 504 of the Rehabilitation Act of 1973).

2. What Is Not Federal Financial Assistance

The receipt of some types of items of value in nonmonetary form may not constitute federal financial assistance.

a. Licenses

Licenses impart a benefit because they entitle the licensee to engage in a particular activity, and they can be quite valuable. However, in *Community Television of Southern California. v. Gottfried*, 459 U.S. 498, 509–12 (1983), the Supreme Court noted that the Federal Communications Commission is not a funding agency and television broadcasting licenses do not constitute federal financial assistance. *Accord, Cal. Ass'n of the Physically Handicapped v. FCC*, 840 F.2d 88, 92–93 (D.C. Cir. 1988) (same). Similarly, the court ruled in *Herman v. United Bhd. of Carpenters*, 60 F.3d 1375, 1381–82 (9th Cir. 1995), that certification of a union by the National Labor Relations Board is akin to a license, and not federal financial assistance under Section 504.

b. Statutory programs or regulations

Similarly, statutory programs or regulations that directly or indirectly support or establish guidelines for an entity's operations are not federal financial assistance. *Herman*, 60 F.3d at 1382 (neither labor regulations establishing apprenticeship programs nor Davis-Bacon Act wage protections are federal financial assistance.); *Steptoe v. Savings of Am.*, 800 F. Supp. 1542, 1548 (N.D. Ohio 1992) (mortgage lender subject to federal banking laws does not receive federal financial assistance); *Rannels v. Hargrove*, 731 F. Supp. 1214, 1222–23 (E.D. Pa. 1990) (federal bank regulations are not federal financial assistance under the Age Discrimination Act).

c. Programs owned and operated by the federal government

Programs “owned and operated” by the federal government, such as the air traffic control system, generally do not constitute federal financial assistance to the beneficiaries of those programs where they cannot be categorized as recipients of that assistance. As stated by then-Deputy Attorney General Nicholas Katzenbach to chairman Emanuel Celler of the Committee on the Judiciary for the House of Representatives:

Activities wholly carried out by the United States with Federal funds, such as river and harbor improvements and other public works, defense installations, veteran's hospitals, mail service, etc. are not included in the list [of federally assisted programs]. Such activities, being wholly owned by, and operated by or for, the United States, cannot fairly be described as receiving Federal "assistance." While they may result in general economic benefit to neighboring communities, such benefit is not considered to be financial assistance to a program or activity within the meaning of Title VI.

110 Cong. Rec. 13380 (1964). *See Paralyzed Veterans*, 477 U.S. at 612 ("[T]he air traffic control system is not 'federal financial assistance' at all. Rather, it is a federally-conducted program that has many beneficiaries but no recipients."); *Jacobson v. Delta Airlines*, 742 F.2d 1202, 1213 (9th Cir. 1984) (Congress put in place a mechanism to charge airlines for their share of the cost of air traffic control system; therefore, airlines were not recipients of federal financial assistance).

d. Guaranty and insurance contracts

Title VI specifically states that it does not apply to "Federal financial assistance ... extended by way of a contract of insurance or guaranty." 42 U.S.C. § 2000d-1. In *United States v. Baylor University Medical Center*, 736 F.2d 1039, 1048 (5th Cir. 1984), for example, the court noted that the legislative history of Title VI makes it abundantly clear that Congress intended to exempt individual bank accounts in a bank with federally guaranteed deposits from Title VI. *See also Gallagher v. Croghan Colonial Bank*, 89 F.3d 275, 277 (6th Cir. 1996) (default insurance for bank's disbursement of federal student loans is a "contract of insurance," and excluded from Section 504 coverage of agency regulations); *Butler v. Capitol Fed. Sav.*, 904 F. Supp. 1230, 1233 (D. Kan. 1995) ("Title VI specifically exempts a contract of insurance from the definition of 'federal financial assistance.'").⁶

e. Procurement contracts

Like guaranty and insurance contracts, procurement contracts are also not considered federal financial assistance. *See* Letter from Robert Kennedy, Attorney General, to Hon. John Sherman Cooper (April 29, 1964), *reprinted in* 110 Cong. Rec. 10075, 10076 (1964) ("Title VI does not apply to procurement contracts, or to other contracts which do not involve financial assistance by the United States."); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 421 (4th Cir. 2005) (defendant's "status as a government contractor is irrelevant to Title VI liability [because Title VI] coverage turns on the receipt of "federal financial assistance", not the existence of a contractual relationship"); *LaBouve v. Boeing Co.*, 387 F. Supp. 2d 845, 854 (N.D. Ill. 2005)

⁶ On the other hand, in *Moore v. Sun Bank*, 923 F.2d 1423, 1427 (11th Cir. 1991), the court ruled that loans guaranteed by the Small Business Administration constituted federal financial assistance because Section 504—as contrasted with Title VI—does not exclude contracts of insurance or guaranty from coverage.

(Department of Defense contract with a corporation for the procurement of a fighter aircraft did not constitute federal financial assistance); *Gallagher*, 89 F.3d at 277 (interest subsidies are akin to procurement contracts); *Cook v. Budget Rent-A-Car Corp.*, 502 F. Supp. 494, 496–97 (S.D.N.Y. 1980) (contracts involving goods or services purchased by the government at fair market value do not constitute “assistance” because the word connotes a transfer of funds at reduced consideration or as a subsidy).

f. Assistance to ultimate beneficiaries

Finally, Title VI does not apply to direct, unconditional assistance to ultimate beneficiaries, the intended class of private citizens receiving federal aid. For example, social security payments and veterans’ pensions are not federal financial assistance. *Soberal-Perez v. Heckler*, 717 F.2d 36, 40 (2d Cir. 1983); *but see Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 602, n.16 (D.S.C. 1974) (distinguishing pensions from payments to veterans for educational purposes because payments for education require or are conditioned on the individual participating in a program or activity). During debate preceding passage of the Civil Rights Act, members of Congress responded to concerns about the scope of Title VI by explaining that Title VI would not apply to direct benefit programs: “The title does not provide for action against individuals receiving funds under federally assisted programs—for example, widows, children of veterans, homeowners, farmers, or elderly persons living on social security benefits.” 110 Cong. Rec. 15866 (1964) (statement of Sen. Humphrey); *see* 100 Cong. Rec. 6544 (1963) (statement of Sen. Humphrey); *see also* 110 Cong. Rec. 1542 (1964) (statement of Rep. Lindsay); 110 Cong. Rec. 13700 (1964) (statement of Sen. Javits).

3. Why Establish Federal Financial Assistance?

Under Title VI and similar statutes, a federal agency has jurisdiction over a recipient’s conduct through the federal financial assistance that it gives to the recipient. Before an agency can undertake a complaint investigation, it first needs to establish that it has or is providing federal financial assistance to the recipient alleged to be engaging in discriminatory conduct. *See, e.g., Bachman v. Am. Soc. of Clinical Pathologists*, 577 F. Supp. 1257, 1261 (D.N.J. 1983) (defendant received funds during the period of alleged discrimination); *cf. Johnson v. Bd. of Educ. of Prince George’s Cty.*, No. PJM 11-1195, 2014 WL 3778603, at *1 (D. Md. July 29, 2014) (court noted that “funds must be received during the relevant time period of the alleged discrimination for a cause of action to survive.”); *Vanes v. Ind. Comm’n on Pub. Records*, No. 2:07-CV-00063 RLYWGH, 2008 WL 763374, at *4 (S.D. Ind. Mar. 20, 2008) (court stated that “the entity must be a recipient of federal financial assistance during the time of the alleged discriminatory conduct; otherwise, the entity cannot be liable under Section 504.”).

The financial assistance does not have to relate to a program in which the complainant participates or seeks to participate or used for the complainant’s benefit. Rather, an agency only

has to prove that the entity received federal financial assistance when the alleged discrimination occurred. *See Howe v. Hull*, 874 F. Supp. 779, 789 (N.D. Ohio 1994) (“Defendant cannot receive federal funds on the one hand, and on the other deny he is covered by the [federal Rehabilitation Act] simply because he received no federal funds for his involvement with [complainant].”); *see also Estate of Alcalde v. Deaton Specialty Hosp. Home, Inc.* 133 F. Supp. 2d 702, 708 (D. Md. 2001) (motion to dismiss denied in case where the court emphasized “the receipt of federal funds when determining liability under [Section 504 of the Rehabilitation Act]” where defendant claimed he was not subject to federal financial assistance requirements because he saw the patient in his office and not at the hospital and it was the hospital that entered into the grant with the federal agency).

An agency unable to establish that it provided federal financial assistance to an entity would not have the authority to conduct a complaint investigation or seek recourse under Title VI unless it is jointly investigating with another federal agency that provides the federal financial assistance, the unresolved complaint has been referred to DOJ for litigation, or DOJ is considering potential participation in a private Title VI case and needs to conduct some investigation to determine if such participation is appropriate. In the absence of these circumstances, the Title VI coordination regulations require the agency to “refer the complaint to another federal agency or advise the complainant.” 28 C.F.R. § 42.408(b).⁷

4. Determining Whether an Entity Receives Federal Financial Assistance

When trying to identify funding sources of a recipient who has allegedly engaged in discriminatory acts, agencies should:

- Seek information from program offices responsible for providing grants;
- Use a data request to ask the target of the investigation directly for the information;
- Contact possible primary recipients for assistance identifying pass-through funds;
- Conduct internet research (e.g., county board minutes);
- Contact funding component program staff for leads;
- Research entities on the [USA Spending.gov](https://www.usaspending.gov) website (includes data about recipients and sub-recipients of various types of contracts, grants, loans, and other possible federal financial assistance);

⁷ The Civil Rights Division is able to file statements of interest in matters pending in U.S. District Courts, including on matters brought by private litigants involving recipients of funds from non-DOJ sources. For example, the Division filed a statement of interest in a case involving a recipient’s obligation to provide language assistance to limited English proficient individuals seeking driver’s licenses. *Faith Action for Cmty. Equity v. Hawaii Dep’t. of Transp.*, 13-CV-00450 (D. Haw. filed Mar. 28, 2014) available at http://www.lep.gov/resources/DOJ_SOI_Hawaii.pdf (last visited Apr. 12, 2016).

- Contact other federal agencies to discuss possible coordination. Some agencies have accessible online databases. *E.g.*, <https://taggs.hhs.gov/> (the TAGGS database is a central repository of grants awarded by the eleven HHS Operating Divisions); the [DOJ, Office of Justice Programs](#) has a public website that provides award information; similarly, the [Community Oriented Policing Services](#) website, a component within DOJ, also has grant information on line. Other agencies also post award information.

Finally, agency offices addressing Title VI complaints should confirm receipt of any federal financial assistance before concluding that the agency has jurisdiction.

D. What/Who Is a Recipient?

In simple terms, a Title VI recipient is an entity that receives, directly or indirectly, financial assistance from a federal agency.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **RECEIVING** Federal financial assistance.

1. Regulations

A “recipient” is an entity or person that receives federal financial assistance. Under Title VI, it is the recipient who is barred from discriminating against persons because of race, color, or national origin with respect to the operation of covered programs or activities.

All agency Title VI regulations use a similar if not identical definition of “recipient,” as follows:

(f) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign [sic], or transferee thereof, but such term does not include any ultimate beneficiary.

(g) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

28 C.F.R. §§ 42.102(f), (g) (Department of Justice regulations).

In plain language, the regulation provides:

- A recipient may be a public entity (e.g., a state, local or municipal agency), a private entity, or an individual;
- Title VI does not apply to the federal government;
- There may be more than one recipient in a program; that is, a primary recipient (e.g., state agency) that transfers or distributes assistance to a subrecipient (local entity) for distribution to an ultimate beneficiary;⁸
- A recipient also encompasses a successor, transferee, or assignee of the federal assistance (property or otherwise), under certain circumstances; and
- As discussed below, there is a distinction between a recipient and a beneficiary.

A recipient also may receive federal assistance either directly from the federal government or indirectly through a third party, who is not necessarily another recipient (e.g., schools are indirect recipients when they accept payments from students who directly receive federal financial aid).⁹

If a recipient distributes federal financial assistance to other entities, it must monitor Title VI compliance for subrecipients and implement procedures to receive and investigate complaints or other information indicating potential noncompliance. Federal agency regulations generally require that the primary recipient obtain compliance reports from its subrecipients and make efforts to ensure that subrecipients permit access to information. *See, e.g.*, 28 C.F.R. §§ 42.106(b), (c) (DOJ regulations). A recipient can be liable for failure to take steps to ensure the compliance of its subrecipients. *Cf. United States v. Maricopa Cty.*, 915 F. Supp. 2d 1073 (D. Ariz. 2012) (ruling that the county government is a proper Title VI defendant under principles of municipal liability).

2. Direct Recipient

A direct recipient of federal financial assistance for Title VI purposes is an entity that accepts financial assistance from a federal agency and, therefore, becomes subject to the requirements of Title VI. Federal financial assistance can be monetary or non-monetary and includes federal grants, loans, or contracts (other than a contract for goods or services at fair market value or of insurance or guaranty). For example:

- City Police Department (CPD) applies for and receives a grant from DOJ for its community outreach programs. CPD is a recipient of federal financial assistance.

⁸ An ultimate beneficiary usually does not receive a “distribution” of the federal money. Rather, the beneficiary enjoys the benefits of enrollment in the program.

⁹ *See Grove City Coll. v. Bell*, 465 U.S. 555, 563 (1984) (student financial aid office received federal financial assistance in the form of loans to students provided for the purpose of paying for college); *see also Liberty Res., Inc. v. Philadelphia Hous. Auth.*, 528 F. Supp. 2d 553, 558 (E.D. Pa. 2007) (public housing authority that receives federal financial assistance from HUD through a voucher program).

- CPD also received a grant for the purchase of bulletproof vests. CPD remains a recipient as long as it uses the vests purchased with grant funds.
- CPD is given excess military equipment from the Defense Department that it continues to use. CPD remains a recipient as long as it uses the equipment.
- Ten years ago, Smithtown University applied for and received federal grants, loans, and interest subsidies in excess of \$7 million from the Department of Education. The University used this assistance to construct a law school. The University is a “recipient” through the present day because it used federal financial assistance during construction and it continues to use the building for its original (or similar) purpose.
- Airport operators voluntarily accept federal funds under a statutory program for airport construction and capital development. The airport operators are recipients subject to nondiscrimination provisions as long as they use the facilities constructed with federal funds for their original (or similar) purposes. *See Paralyzed Veterans*, 477 U.S. at 606–07.

The clearest means of identifying a “recipient” of federal financial assistance is to determine whether the entity has voluntarily entered into a relationship with the federal government and receives federal assistance under a condition or assurance of compliance with Title VI (and/or other nondiscrimination obligations). *Id.* at 605–06. (“By limiting coverage to recipients, Congress imposes the obligations of § 504 [and Title VI] upon those who are in a position to accept or reject those obligations as part of the decision whether or not to ‘receive’ federal funds.”). As one court noted:

By accepting the funds, one accepts the obligations that go along with it, namely, the obligation not to exclude from participation, deny benefits to, or subject to discrimination an otherwise qualified handicapped individual solely by reason of her handicap. Only by declining the federal financial assistance can one avoid this obligation.

Chester v. Univ. of Wash., No. C11-5937, 2012 WL 3599351, at *4 (W.D. Wash. Aug. 21, 2012).

The acceptance of federal assistance triggers Title VI coverage and becomes formalized when a recipient signs an assurance: a contract whereby the recipient agrees to comply with the nondiscrimination provisions as a condition of receiving federal assistance.¹⁰ Even without a

¹⁰ A recipient’s written assurance and certification documents can provide an independent contractual basis for enforcement of nondiscrimination requirements. For example, the assurance document from the Office of Justice Programs, a Department of Justice component, states, inter alia, “[The Applicant] will comply, and all its contractors will comply, with the nondiscrimination requirements of the [Safe Streets Act, Title VI, Section 504, Title IX]” The United States may bring civil actions to enforce Title VI contractual assurances. *See* Department of Justice, *Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964*, 28 C.F.R. § 50.3, pt. I.B.1 (listing various “[p]ossibilities of judicial enforcement,” including suits to enforce contractual assurances).

written or signed assurance, however, acceptance of federal financial assistance triggers coverage under Title VI. *See Paralyzed Veterans*, 477 U.S. at 605 (“the recipient’s acceptance of the funds triggers coverage under the nondiscrimination provision”). *See also Grove City Coll. v. Bell*, 465 U.S. 555, 560–61, 563 (1984) (finding that Grove City College was a recipient even though it refused to sign an assurance); *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 630 (1983) (Marshall, J., dissenting) (citing 3 R. Cappalli, *Federal Grants* § 19:20, at 57, and n.12 (1982) (“[W]ritten assurances are merely a formality because the statutory mandate applies and is enforceable apart from the text of any agreement.”)).

3. Indirect Recipient

Finding that an entity directly receives federal financial assistance is usually the easiest way to identify a Title VI recipient. It is not, of course, the only way.¹¹ A recipient may receive funds either directly or indirectly. *Grove City*, 465 U.S. at 564–65.¹² In *Grove City*, the Supreme Court found the college was a “recipient” under Title IX because students paid for their educational expenses, in part, with federally subsidized loans. *Id.* at 569–70. The Court reasoned that colleges and universities were the intended recipients of the grant program because Congress created the grants to supplement the financial aid programs of institutions of higher education. *Id.* at 565–66. The *Grove City* Court concluded that Congress never intended to “elevat[e] form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance.” *Id.* at 564; *see also Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 452 (5th Cir. 2005) (finding that a university was a “recipient” under Section 504 because its students received federal work study assistance and grants); *Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 602 (D.S.C. 1974) (“payments are specifically tied to the beneficiary’s participation in an educational program or activity,” and go to the university “recipient”), *aff’d*, 529 F.2d 514 (4th Cir. 1975).¹³

Nevertheless, there are limits to the concept of an indirect recipient. As the Supreme Court explained in *Paralyzed Veterans*, an entity that merely enjoys indirectly the benefits of federal financial assistance is not an intended recipient: “While *Grove City* stands for the proposition that Title IX coverage extends to Congress’ intended recipient, whether receiving the aid directly

¹¹ The remaining text of this section distinguishes various scenarios for recipients and beneficiaries. While captions are used to distinguish different circumstances, courts do not uniformly use the same phrase to explain the same funding pattern. Thus, a court may refer to an “indirect recipient” when the situation more closely fits the paradigm of “primary recipient/subrecipient.”

¹² As noted in the Manual, the Supreme Court’s analysis in *Grove City* of the scope of “program or activity” was reversed by the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988). The Court’s discussion of other principles, however, including direct and indirect recipients, remains undisturbed.

¹³ Similarly, in *Spann v. Word of Faith Christian Center Church*, 589 F. Supp. 2d 759, 765–67 (S.D. Miss. 2008), the court found that a daycare center was a recipient of federal financial assistance because it accepted a federally funded voucher from a family to pay for part of the cost of child care. The court reasoned that the daycare center was an intended recipient because the funds were earmarked for a child care provider and the purpose of the subsidy was to “improve the quantity and quality of child care available to low income families.” *Id.* at 767.

or indirectly, it does not stand for the proposition that federal coverage follows the aid past the recipient to those who merely benefit from the aid.” *Paralyzed Veterans*, 477 U.S. at 607 (citing *Grove City*, 465 U.S. at 564).

Along these lines, the Supreme Court in *NCAA v. Smith*, 525 U.S. 459, 468–70 (1999), citing both *Grove City* and *Paralyzed Veterans*, ruled that the NCAA was not an indirect recipient of federal financial assistance under Title IX. The NCAA received dues from colleges and universities who were recipients of federal financial assistance, but the assistance to those institutions was not earmarked for the NCAA. *Id.* at 468. The court concluded that “[a]t most, the [NCAA’s] receipt of dues demonstrates that it indirectly benefits from the federal assistance afforded its members.” *Id.* But, the Court stated, “[t]his showing, without more, is insufficient to trigger Title IX coverage.” *Id.*

The Court in *Smith* specifically did not address DOJ’s argument that “when a recipient cedes controlling authority over a federally funded program to another entity, the controlling entity is covered by Title IX regardless whether it is itself a recipient.” *Id.* at 469–70. The Eleventh Circuit found enough of a connection, however, in *Williams v. Board of Regents*, 477 F.3d 1282 (11th Cir. 2007). In this Title IX case, the court noted that the plaintiff “alleged that [the University of Georgia], a funding recipient, has ceded control over one of its programs, the athletic department, to [the University of Georgia Athletic Association] and provided extensive funding to UGAA.” *Id.* at 1294. Based on this contention, the court ruled that to not extend Title IX coverage to the University in this case would allow “funding recipients to cede control over their programs to indirect funding recipient” but “avoid Title IX liability.” *Id.* (citing *Cmtys. for Equity v. Mich. High Sch. Athletic Ass’n*, 80 F. Supp. 2d 729, 733–34 (W.D. Mich. 2000)).

4. Primary/Subrecipient Programs

Many programs have two or more recipients. The primary recipient directly receives the federal financial assistance. The primary recipient then distributes the federal assistance to a subrecipient to carry out a program. *See, e.g.*, 28 C.F.R. § 42.102(g). The primary recipient and all the subrecipients are covered by and must conform their actions to Title VI. For example:

- A state agency, such as the Department of Children and Family Services, receives a substantial portion of its funding from the federal government. The state agency, as the primary recipient or conduit, in turn, funds local social service organizations in part with its federal funds. The local agencies receive federal financial assistance, and thus are subject to Title VI. *See Graves v. Methodist Youth Servs., Inc.*, 624 F. Supp. 429 (N.D. Ill. 1985) (Section 504 case).¹⁴

¹⁴ The *Graves* court described the local agency as an “indirect” recipient because the federal money flowed “through another recipient,” and it compared this situation to *Grove City College*’s indirect receipt of financial aid funds from

- A state subcontracts with a private company to operate a state institution for individuals with developmental disabilities. The state receives federal funding and uses those funds to pay the private company for its services. The state is the recipient of federal financial assistance and the private company is a subrecipient. As a subrecipient, the company must comply with any program-specific statutes through which it receives funding, as well as Title VI. *See, e.g., Brown v. Fletcher*, 624 F. Supp. 2d 593, 607 (E.D. Ky. 2008) (Section 504 case).
- Under the Older Americans Act, the Department of Health and Human Services gives funds to state agencies. Those agencies, in turn, distribute funds according to funding formulas to local agencies operating programs for elderly Americans. Title VI applies to the local agencies as subrecipients of federal financial assistance as well as to the state agencies that directly receive the funds. *See Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995).

In many instances, a recipient receives funds with the purpose and expectation that it will distribute the funds to one or more sub-grantees or indirect recipients.¹⁵ For example, in *Moreno v. Consolidated Rail Corp.*, 99 F.3d 782 (6th Cir. 1996) (en banc), the United States Department of Transportation provided funds to Michigan for use in upgrading railroad crossings. The state, in turn, provided these funds to Conrail. In finding that Conrail was a recipient of federal financial assistance, the court noted that “[i]t makes no difference, in our view, that the federal funds of which Conrail is the recipient come to it through the State of Michigan rather than being paid to it by the United States directly.” *Id.* at 787. Similarly, in *Rogers v. Board of Education*, 859 F. Supp. 2d 742, 752 (D. Md. 2012), the court held that the county board of education received federal financial assistance because the State Department of Education received federal funds and, through its Department of Treasury, distributed funds to county boards of education. *Id.*

students. *Graves*, 624 F. Supp. at 433. Given that the funding was distributed to a state agency and a portion allocated to a local entity, the more accurate description is that of primary/subrecipient.

¹⁵ The Title VI Coordination Regulations, codified at 28 C.F.R. § 42.401 et seq., are designed to provide agencies with a set of standards for use in developing and implementing a Title VI enforcement and compliance program. One provision addresses grants that go to a central state office with an expectation that the state will distribute the funds to subrecipients:

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of Title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the Title VI compliance of the state agencies and the sub-recipient.

Id. § 42.410.

5. Contractor and Agent

A recipient may not absolve itself of its Title VI obligations by hiring a contractor or agent to perform or deliver assistance to beneficiaries. Agency regulations consistently state that prohibitions against discriminatory conduct apply to a recipient, whether committed “directly or through contractual or other arrangements.” *E.g.*, 28 C.F.R. §§ 42.104(b)(1), (2). For example:

- A recipient public housing authority contracts with a residential management company for the management and oversight of a public housing complex. Employees of the contractor reject prospective tenants based on their race, color, or national origin. The recipient is liable under Title VI for the contractor’s actions as the contractor is performing a program function of the recipient. (For the reasons discussed below, the contractor may also be liable under Title VI).
- In addition, Title VI may cover a contractor that performs an essential function for the recipient, making the contractor itself a recipient. In *Frazier v. Bd. of Trustees.*, 765 F.2d 1278, 1290, *amended*, 777 F.2d 329 (5th Cir. 1985), a Section 504 case, the court noted that the defendant hospital contracted out core medical functions, for which it received federal financial assistance, to a contractor. The court ruled that this financial assistance to the hospital “would not have been [provided] at all were it not for [the contractor’s] performance as a de facto subdivision of [the hospital].” *Frazier*, 765 F.2d at 1290; *but see Rose v. Cahee*, 727 F. Supp. 2d 728, 739 (E.D. Wis. 2010) (court declined to follow *Frazier*, limiting coverage of the funding assistance nondiscrimination cover the contractor of a recipient requirement to those entities receiving the funds directly and that “are in a position to choose whether to do so”). Of significance, core hospital functions were at issue in *Frazier*. Failure to extend Title VI protection in this case arguably would have permitted the hospital to contract out all of its federally funded functions and deprive the beneficiaries of protection under the Title VI and the other federal financial assistance statutes.¹⁶ See also the discussion of indirect recipients, above.

¹⁶ As the court noted in *Frazier*:

It is this mutual benefit that distinguishes [the contractor’s] womb-like financial situation from that of a private contractor with no material relationship to the recipient’s receipt of federal funds. Unlike the hospital’s privately contracted mower of lawns, sweeper of floors, or supplier of aspirin, [the contractor] contributes in a direct and tangible way to the hospital’s claims for reimbursement under Medicare and Medicaid. That the federal check does not bear [the contractor’s] name is no answer to the fact that the check would not have been written at all were it not for [the contractor’s] performance as a de facto subdivision of [the hospital].

Frazier, 765 F.2d at 1290.

6. Transferees and Assignees

When the federal government provides financial assistance related to real or personal property, such as by partially financing construction or renovations on a building, a “recipient” is defined more broadly. In such circumstances, successors, transferees, assignees, and contractors all may be recipients under Title VI. Agency regulations and assurances often include specific statements on the application of Title VI in situations involving real or personal property. For example, DOJ’s regulations state:

In the case where Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or in the case of a subsequent transfer, the *transferee*, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits The responsible Department official shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants.

28 C.F.R. § 42.105(a)(1) (emphasis added).

Furthermore, land that originally was acquired through a program receiving federal financial assistance must include a covenant binding on subsequent purchasers or transferees that requires nondiscrimination for as long as the land is used for the original or a similar purpose for which the federal assistance is extended. 28 C.F.R. § 42.105(a)(2).¹⁷

7. Recipient v. Beneficiary

Finally, in analyzing whether an entity is a recipient, it is necessary to distinguish a recipient from a beneficiary: the former must comply with Title VI while the latter does not. *See Paralyzed Veterans*, 477 U.S. at 606–07.¹⁸ An assistance program may have many beneficiaries, that is, individuals and entities that directly or indirectly receive an advantage through the operation of a federal program. Beneficiaries, however, do not enter into any formal contract or

¹⁷ In contrast, in *Independent Housing Services of San Francisco v. Fillmore Center Associates*, 840 F. Supp. 1328, 1341 (N.D. Cal. 1993), the transfer of property at issue occurred before the effective date of HUD regulations stating that transferees or purchasers of real property are subject to Section 504. The San Francisco agency was a recipient of funds under a block grant to assemble and clear land for redevelopment. The purchaser of the land, who built housing units, was considered a beneficiary. *Id.*

¹⁸ Most agency Title VI regulations state that the term recipient “does not include any ultimate beneficiary under the program.” *See, e.g.*, 28 C.F.R. § 42.102(f) (DOJ).

agreement with the federal government where compliance with Title VI is a condition of receiving the assistance.¹⁹

In almost any major federal program, Congress may intend to benefit a large class of persons, yet it may do so by funding—that is, extending federal financial assistance to—a limited class of recipients. Section 504, like Title IX in *Grove City*, draws the line of federal regulatory coverage between the recipient and the beneficiary.

Id. at 609–10.

In distinguishing between recipients and beneficiaries, courts have considered both the intent of Congress and a party’s ability to accept or reject the federal financial assistance. *Alfano v. Bridgeport Airport Servs.*, 373 F. Supp. 2d 1, 5 (D. Conn. 2005) (citing *Paralyzed Veterans*, 477 U.S. at 605–06). In *Paralyzed Veterans*, the Court held that commercial airlines were beneficiaries of an airport improvement program, and not recipients under Section 504. *Id.* at 607.²⁰ The Court reasoned that the purpose of the program was to improve airports, not to give aid to individual airlines. *Id.* at 604–05. The Court rejected the argument that the airlines were indirect recipients because airport operators converted federal funds into runways and other property improvements for the airlines. *Id.* at 606–07. The Court noted that there was no evidence that the airlines were intended recipients of the aid or that the airport operators were mere conduits of the funds. *Id.* at 607 (citing *Grove City*, 465 U.S. at 564). The Court found that the airport operators were the recipients because they received federal funds, agreed to comply with civil rights statutes as a condition of the assistance, and could terminate their participation in the program at any time. *Id.* at 604–06 (citing *Grove City*, 465 U.S. at 565 n.13).

E. “Program or Activity”

Title VI prohibits discrimination in “any program or activity,” any part of which receives Federal financial assistance. *See* 42 U.S.C. §§ 2000d, 2000d-4(a). Interpretations of “program or

¹⁹ For example, in *Cuffley v. Mickes*, 208 F.3d 702 (8th Cir. 2000), plaintiffs Knights of the Ku Klux Klan brought suit against the Missouri Highway and Transportation Commission for denying its application to participate in Missouri’s Adopt-a-Highway program. Among the state’s reasons for denying the application was that allowing the Klan to participate in the Adopt-a-Highway program would violate Title VI and would cause the state to lose its federal funding. The Eighth Circuit ruled that “Title VI clearly does not apply directly to prohibit the Klan’s discriminatory membership criteria” and that the Klan is not a direct recipient of federal financial assistance through the Adopt-A-Highway program, but merely a beneficiary of the program. Therefore, the state’s Title VI-based denial of the Klan’s application was invalid. *Id.* at 710.

²⁰ In response to *Paralyzed Veterans*, Congress passed the Air Carrier Access Act (ACAA) in 1986, requiring that Department of Transportation regulations ensure that air carriers traveling within the United States do not discriminate against passengers based on disability.

activity” depend on whether one is analyzing the scope of Title VI’s prohibitions or evaluating what part of the entity is subject to a potential fund termination or refusal. As described in greater detail elsewhere in the manual, “a recipient may be only a part of a larger entity. Title VI often covers, and prohibits discrimination in, the larger entity, rather than the smaller program that directly receives the funding.” This section focuses on coverage.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any **PROGRAM OR ACTIVITY** receiving Federal financial assistance.

1. Introduction

When enacted in 1964, Title VI did not include a definition of “program or activity.” Congress had made its intentions clear, however: Title VI’s prohibitions were meant to be applied institution-wide, and as broadly as necessary to eradicate discriminatory practices in programs that federal funds supported. 110 Cong. Rec. 6544 (statement of Sen. Humphrey); *see* S. Rep. No. 64, 100th Cong., 2d Sess. 5–7 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3, 7–9. The courts, consistent with congressional intent, initially interpreted “program or activity” broadly to encompass the entire institution in question. For example, Title VI covered all of the services and activities of a university even where the sole federal assistance was federal financial aid to students. *See, e.g., Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 603 (D.S.C. 1974), *aff’d*, 529 F.2d 514 (4th Cir. 1975); S. Rep. No. 64 at 10, *reprinted in* 1988 U.S.C.C.A.N. at 12. In 1984, the Supreme Court in *Grove City College v. Bell*, 465 U.S. 555, 571 (1984), severely narrowed the interpretation of “program or activity.” The Court ruled that Title IX’s prohibitions against discrimination applied only to the specific office of an institution’s operations that received the federal funding. Because the college received federal funds as a result of federal financial aid to students, the Court found that the “program or activity” was the college’s financial aid program. *Id.* at 574.

In response to *Grove City*, Congress passed the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (CRRA). The CRRA includes virtually identical amendments to broadly define “program or activity” (for coverage purposes) for the four cross-cutting civil rights statutes: Title VI, Title IX, Section 504, and the Age Discrimination Act.²¹ Congress

²¹ The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq. (ADA 1975), similar to Title VI, provides that “no person in the United States shall, on the basis of age, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.” *Id.* § 6102. The ADA 1975 does not include age limits; that is, there are neither minimum nor maximum age parameters that would limit coverage to young or old persons. The Act includes a provision giving the Department of Health and Human Services responsibility for issuing regulations addressing the Act, *id.* at § 6103, as well as other coordination and oversight responsibilities. Similar to the other federal financial assistance statutes,

determined that legislative action was “necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.” CRRA § 2. Congress explained that it always had been its intent that Title VI and its progeny “be given the broadest possible interpretation” so that federal agencies may “assist in the struggle to eliminate discrimination from our society by ending federal subsidies of such discrimination.” S. Rep. No. 64 at 7, *reprinted in* 1988 U.S.C.C.A.N. at 9;²² *see also Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938, 942 (9th Cir. 2009) (citing *Sharer v. Oregon*, 581 F.3d 1176, 1178 (9th Cir. 2009)) (the term “program or activity” should be viewed as expansive in meaning and application); *Salinas v. City of New Braunfels*, 557 F. Supp. 2d 771, 775 (W.D. Tex. 2006) (citing *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002)) (“Courts have broadly construed the “services, programs, or activities” language in ... the Rehabilitation Act to encompass “anything a public entity does.”).²³

With regard to public institutions or private institutions that serve a public purpose, the “program or activity” that Title VI covers encompasses the entire institution and not just the part of the institution that receives federal financial assistance. 42 U.S.C. § 2000d-4a. Moreover, the part of the program or activity that receives assistance can be, and often is, distinct from the part that engages in the allegedly discriminatory conduct. *See White v. Engler*, 188 F. Supp. 2d 730, 745–47 (E.D. Mich. 2001) (plaintiffs could pursue a Title VI claim against a scholarship program, even though the program operated without federal financial assistance, because it was part of a department that received federal funds); *D.J. Miller & Assocs. v. Ohio Dep’t of Admin. Servs.*, 115 F. Supp. 2d 872, 878 (S.D. Ohio 2000) (granting a preliminary injunction under Title VI regarding alleged discrimination in a state contract where the contract was administered by a department that received federal funds).

In *Lucero v. Detroit Public Schs.*, 160 F. Supp. 2d 767, 785–86 (E.D. Mich. 2001), plaintiffs claimed that school officials violated Title VI when they relocated a largely minority elementary school to a site with alleged environmental toxins. The court held that it was irrelevant that the construction of the new school did not involve federal financial assistance because the term “program or activity” broadly encompassed the entire school district. *Id.* at 785. The court reasoned that the construction of the new school was “an operation of” or “part of” the larger

however, each grant making agencies are responsible for addressing allegations that their recipients have violated the Act.

²² The Senate further stated that “[t]he purpose of the Civil Rights Restoration Act of 1987 is to reaffirm pre-*Grove City* judicial and executive branch interpretations and enforcement practices which provided for broad coverage of the anti-discrimination provisions of these civil rights statutes.” *Id.*

²³ In 1999, the Third Circuit held that the CRRA’s statutory definition of “program or activity” did not apply to the effects test created by Title VI regulations. *Cureton v. NCAA*, 198 F.3d 107 (3d Cir. 1999). The court reasoned that because the Title VI regulations in question had not been amended to reflect the CRRA’s definition, the effects test only applied to specifically funded programs. In response to the decision, federal agencies amended their regulations to make clear that CRRA’s broad definition of “program or activity” applies to claims brought under the effects test enunciated in regulations, as well as to intentional discrimination. *See, e.g.*, 34 C.F.R. §§ 100.13(g); 104.3(k); 106.2(h) (Dep’t of Educ.); 45 C.F.R. §§ 80.13; 86.2; 91.4 (HHS).

school district. *Id.* Therefore, it was sufficient that the school district received federal funds for other purposes to extend Title VI coverage to the construction of the school in question. *Id.*

2. State and Local Governments

The following instrumentalities of a state or local government may constitute a “program or activity” under Title VI:

- [A]ll of the operations of
- (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- ... any part of which is extended Federal financial assistance.

42 U.S.C. § 2000d-4a(1). The legislative history confirms Congress intended a broad application to state and local governments:

[W]hen any part of a state or local government department or agency is extended federal financial assistance, the entire agency or department is covered. If a unit of a state or local government is extended federal aid and distributes such aid to another governmental entity, all of the operations of the entity which distributes the funds and all of the operations of the department or agency to which the funds are distributed are covered.

S. Rep. No. 100-64, at 16 (1988), *reprinted in* 1988 U.S.C.C.A.N. 18. As such, when an office or operation is part of a larger department or entity, the relevant “program or activity” is the larger entity.

In *Haybarger v. Lawrence Cty. Adult Probation & Parole*, 551 F.3d 193, 199–203 (3d Cir. 2008), the plaintiff alleged that Lawrence County Adult Probation and Parole Department (LCAPPD) engaged in unlawful employment discrimination practices that Section 504 prohibits. *Id.* at 196–97. While LCAPPD did not receive federal funds, “the Domestic Relations Section (DRS) of the Fifty–Third Judicial District did receive federal funds under Title IV–D of the Social Security Act.” *Id.* at 197. The court explained that “although a particular function or operation might be the State’s only link to federal funds ... [Title VI] applies to ‘all the operations’ of the entity receiving federal funds.” *Id.* at 200.²⁴ Because the court found the DRS

²⁴ While federal law controls in determining whether an entity is a covered “program or activity” under Title VI, state or local law can inform the decision of whether a particular entity is independent or a subunit of another entity. See *Haybarger*, 551 F.3d at 200–01; *Sharer v. Oregon*, 581 F.3d 1176, 1178 (9th Cir. 2009).

to be a sub-unit of the Fifty–Third Judicial District, which is in turn part of Pennsylvania’s Unified Judicial System, the DRS’s receipt of federal funds effectuated a waiver of Eleventh Amendment immunity for not just the DRS, but for all subunits of the Fifty–Third Judicial District, including the LCAPPD. *Id.* at 202. The court concluded that the relevant “program or activity” was the entire Judicial District because the LCAPPD formed a part of the Judicial District. *Id.* at 202–03 (citing *Thomlison v. City of Omaha*, 63 F.3d 786 (8th Cir. 1995)).²⁵ See also *Huber v. Howard Cty.*, 849 F. Supp. 407, 415 (D. Md. 1994) (“if one part of a department receives federal financial assistance, the whole department is considered to receive federal assistance”), *aff’d* 56 F.3d 61 (4th Cir. 1995); *Starr v. Hawaii*, CV05-00665, 2007 WL 3254831 *3 (D. Haw. Nov. 2, 2007) (citing cases).

An entire state or local government generally is not considered a “program or activity” where the funding goes to an agency or department within the entity and not to the state or local government specifically.²⁶ See *Lovell v. Chandler*, 303 F.3d 1039, 1051 (9th Cir. 2002) (“The term ‘program or activity’ ... does not encompass all the activities of the State. Instead, it only covers all the activities of the department or the agency receiving federal funds.”);²⁷ see also *Schroeder v. City of Chicago*, 927 F.2d 957, 962 (7th Cir. 1991).²⁸ The following examples illustrate this point:

- If federal health assistance is extended to a part of a state health department, the entire health department, including its components, would be covered in all of its operations.

²⁵ In *Thomlison*, the court stated, “Because the definition of program or activity covers all the operations of a department, here the Public Safety Department, and part of the Department received federal assistance, the entire Department is subject to the Rehabilitation Act.” 63 F.3d at 789. In this case, the civil action involved the Fire Department, which was part of the Public Safety Department that also included the Police, and Communications Departments. Because the Police Department received federal financial assistance, the entire Public Safety Department was covered, including the Fire Department.

²⁶ At least one court, however, has held that an entire county was the “program or activity.” See *Bentley v. Cleveland Cty. Bd. of Comm’rs*, 41 F.3d 600 (10th Cir. 1994). See also *Thorpe v. Borough of Jim Thorpe*, 2013 WL 1703572 *13–15 (M.D. Pa. 2013) (extended discussion of federal funding issues), *aff’d in part and rev’d in part on other grounds*, 770 F.3d 255 (3d Cir. 2014).

²⁷ In *Hodges by Hodges v. Pub. Bldg. Comm’n of Chicago*, 864 F. Supp. 1493, 1506 (N.D. Ill. 1994), the court framed the test as follows:

In the post-CRRA era, whether or not an entity receives federal funds is no longer the *sine qua non* of a Title VI action. Consistent with the broad definition of “program or activity,” courts have rejected such a formalistic approach in favor of examining the defendant’s relationship to the entity receiving the federal funds.

²⁸ In *Schroeder*, the court stated:

But the amendment was not, so far as we are able to determine—there are no cases on the question—intended to sweep in the whole state or local government, so that if two little crannies (the personnel and medical departments) of one city agency (the fire department) discriminate, the entire city government is in jeopardy of losing its federal financial assistance.

Id.

However, the entire state government is not considered a covered program just because the health department receives federal financial assistance.

- If the office of a mayor receives federal financial assistance and distributes it to departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies that actually receive the aid from the Mayor's office.
- If a state receives funding that is designated for a particular state prison, the entire State Department of Corrections is considered the covered "program or activity" (but not, however, the entire state).

An entire state or local government may, however, be liable for Title VI violations if it is partially responsible for the discriminatory conduct, is contractually obligated to comply with Title VI, or has a responsibility to monitor subrecipients. In *United States v. City of Yonkers*, 880 F. Supp. 212, 232 (S.D.N.Y. 1995), *vacated and remanded on other grounds*, 96 F.3d 600 (2d Cir. 1996), the court rejected the state's argument that sovereign immunity applied because it is not a "program or activity." The court stated that, not only does the plain language of § 2000d-7 defeat the state's assertion, but also

[N]othing in the legislative history of Title VI compels the conclusion that an entity must be a 'program' or 'activity' to be a Title VI defendant.... We therefore hold that the State of New York can be sued under Title VI as long as it, along with those of its agencies receiving federal financial assistance, is alleged to have been responsible for a Title VI violation.

Id. (note omitted).²⁹ See also *N.Y. Urban League v. Metro. Transp. Auth.*, 905 F. Supp. 1266, 1273 (S.D.N.Y.), *vacated on other grounds*, 71 F.3d 1031 (2d Cir. 1995).

Further, when accepting federal financial assistance, state and local governments should be required to obligate themselves to comply with Title VI by a separate contract of assurance. Often times, this contractual arrangement is formalized when a state or local government signs an assurance agreement. See, e.g., *United States v. Maricopa Cty.*, 2:10-cv-01878-LOA (D. Ariz. filed Sept. 13, 2010) (United States sues county government for Title VI violations, in part, because of its obligations under contractual assurances); *United States v. Maricopa Cty.*, 2:12-cv-00981-ROS (D. Ariz. filed May 10, 2012) (same). Even absent a written contract, the state or local government obligates itself to comply with Title VI if the entire governmental unit accepts federal financial assistance. Cf. *Paralyzed Veterans*, 477 U.S. at 605 (noting that "the recipient's

²⁹ Plaintiffs had alleged that the state, through its legislature, contributed to the alleged school segregation by passing laws that impeded desegregation efforts and providing limited financial assistance for such efforts. *Id.* at 232 n.25. It is unclear whether the plaintiffs introduced evidence in support of these allegations. In a subsequent opinion, the court did not address these facts and rejected plaintiffs' arguments that a state, solely by its failure to prevent alleged discrimination, could be held vicariously liable for a local agency's discriminatory acts under either an intent or discriminatory effect standard. *United States v. City of Yonkers*, 880 F. Supp. 591, 597–98 (S.D.N.Y. 1995), *vacated and remanded*, 96 F.3d 600 (2d Cir. 1996).

acceptance of the funds triggers [contractual] coverage under the nondiscrimination provision”) (citing *Soberal-Perez v. Heckler*, 717 F.2d 36, 41 (2d Cir. 1983)).

3. Educational Institutions

In the educational context, Title VI provides that the following institutions constitute a “program or activity”:

- all of the operations of
- (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
- (B) a local educational agency (as defined in Section 7801 of Title 20), system of vocational education, or other school system;
- ... any part of which is extended Federal financial assistance.

42 U.S.C. § 2000d-4a(2) (emphasis added). Section 2(A) specifically overturns *Grove City* by including all of the operations of a postsecondary institution when any part of that institution is extended federal financial assistance.³⁰ See *Knight v. Alabama*, 787 F. Supp. 1030, 1364 (N.D. Ala. 1991) (entire statewide university system constituted “program or activity,” notwithstanding limited autonomy of institutions and even though not all institutions received federal assistance), *aff’d in part, rev’d in part, and vacated in part*, 14 F.3d 1534 (11th Cir. 1994).

Senate Report 64 provides several examples of the scope of an educational “program or activity.” Federal funding to one school subjects the entire school system to Title VI. S. Rep. No. 64 at 17, *reprinted in* 1988 U.S.C.C.A.N. at 19. Congress explained that the phrase “all of the operations of” encompasses, but is not limited to, “traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities.” *Id.*

The courts have followed this broad interpretation by ruling that a local educational agency includes school boards, their members, and agents of such boards. *Horner v. Kentucky High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1994) (Title IX case); *Rogers v. Bd. of Educ.*, 859 F. Supp. 2d 742, 752 (D. Md. 2012); *Meyers ex rel. Meyers v. Bd. of Educ.*, 905 F. Supp. 1544 (D. Utah 1995);³¹ see also *Young ex rel. Young v. Montgomery Cty. Bd. of Educ.*, 922 F. Supp. 544 (M.D. Ala. 1996) (court addressed the merits of Title VI claims against the county board of education without comment or question as to the propriety of such claims). In *Rogers*, for

³⁰ “Postsecondary institution is a generic term for any institution which offers education beyond the twelfth grade. Examples of postsecondary institutions would include vocational, business and secretarial schools.” S. Rep. No. 64 at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18.

³¹ The court in *Meyers* opined that the Department of Education’s regulations have a narrower definition of “program or activity” than is set forth in the statute. *Id.* at 1574 n.37. Nonetheless, the definition was broad enough to encompass the program at issue in the case.

example, the court held that the county board of education received federal financial assistance because the state's Department of Education received federal funds and, through its Department of Treasury, distributed funds to county boards of education. *Rogers*, 869 F. Supp. 2d at 752. The court concluded that the county board of education was a proper defendant under Title VI because it fit the definition of a "local educational agency" under the statutory language for covered programs or activities. *Id.* at 745 (citing 42 U.S.C. § 2000d-4a(2)(B)).

4. Corporations and Private Entities

While the CRRRA restored institution-wide definitions of a program or activity for public entities or entities that serve a public purpose, it left in place a more narrow definition for private entities. *See Boswell v. Skywest Airlines, Inc.*, 217 F. Supp. 2d 1212, 1216 (D. Utah 2002) ("[W]ith respect to private organizations such as [the defendant], the statutory definition of 'program or activity' was not expanded to the pre-*Grove City* institution-wide definition."), *aff'd*, 361 F.3d 1263 (10th Cir. 2004) (court did not address the definition of program or activity). The scope of "program or activity" as it applies to a corporation or other private entity depends on the operational purpose of the entity, the purpose of the funds, and the structure of the entity. Title VI provides:

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship;

... any part of which is extended Federal financial assistance.

42 U.S.C. § 2000d-4a(3).

When federal financial assistance broadly supports an entire private organization, all of its operations are subject to Title VI. 42 U.S.C. § 2000d-4a(3)(A)(i). Funds are given to an entity "as a whole" when such funds further the central or primary purpose of the entity, or the funds are not for a specific, narrow purpose. For example, funds provided to ensure the continued operation of a corporation such as by preventing bankruptcy, are assistance to the entity "as a whole." S. Rep. No. 100-64 at 17, *reprinted in* 1988 U.S.C.C.A.N. at 19. By contrast, funds for a specific purpose or funds that support one of several functions of the private entity are not assistance to the recipient "as a whole." When the funding is narrowly tailored, Title VI covers

only the part of the recipient's operations that receives funds. The following are examples of funding for a specific purpose that does not apply to the entity "as a whole":

- An airline that receives Department of Transportation funds for certain rural routes. *Boswell*, 217 F. Supp. 2d at 1217–19.
- A company that receives funds for job training. S. Rep. No. 100-64 at 17, *reprinted in* 1988 U.S.C.C.A.N. at 19.
- A religious organization that receives a grant to enable it to extend assistance to refugees, which is just one of a number of activities of the organization. *Id.*

The notion that federal aid "frees up" funds for other purposes or the fungibility of money does not expand the application of Title VI beyond the principles described above. *Id.* at 17–18, *reprinted in* 1988 U.S.C.C.A.N. at 19–20.

When federal assistance is extended to a plant or any other comparable, geographically separate corporate facility or other private entity, Title VI covers only the operations of the specific plant or facility. 42 U.S.C. § 2000d-4a(3)(B). Congress gave the following example to illustrate this point: the federal government extended federal financial assistance to the Michigan State Department of Health, which in turn provided funding for first aid training to the General Motors Dearborn, Michigan plant. As a result, Title VI covers all Dearborn plant operations, as well as the State Department of Health that distributed the federal money. Title VI does not, however, cover other geographically separate General Motors facilities merely because of the assistance to the Dearborn plant. S. Rep. No. 100-64 at 18-19, *reprinted in* 1988 U.S.C.C.A.N. at 20–21.

The definition of "program or activity" is broader for private entities that engage in certain public works. For recipients "principally engaged" in the business of providing education, health care, housing, social services, or parks and recreation, the term "program or activity" has an institution-wide application. 42 U.S.C. § 2000d-4a(3)(A)(ii). In other words, Title VI covers the entire entity when any part of it receives federal financial assistance. For example, Nursewell Corporation owns and runs a chain of five nursing homes as its principal business. One of the five nursing homes receives federal financial assistance under the Older Americans Act. Because the corporation is principally engaged in the business of providing social services and housing for elderly persons, aid to one home will subject the entire corporation to the requirements of Title VI. *See* S. Rep. No. 64 at 18, *reprinted in* 1988 U.S.C.C.A.N. at 20; *see also* Mary Crossley, *Infected Judgment: Legal Responses to Physician Bias*, 48 Vill. L. Rev. 195, 265 (2003).

The terms "education, health care, housing, social service, or parks and recreation" should be construed broadly consistent with ordinary meaning. In an Eighth Circuit case, the court addressed the scope of "social services" and "education."

In terms of what businesses might qualify as providing education, the statute envisions that education is not limited to the sort of instruction received in a traditional school system. As noted above, formal educational systems are covered by a separate provision, § 794(b)(2). Section 794(b)(3)(A)(ii), then, covers the sort of education offered by stand-alone schools or by other private organizations seeking to train and develop individuals. As to what constitutes a social service, it is “an activity designed to promote social well-being” such as “organized philanthropic assistance of the sick, destitute, or unfortunate.”

Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Ind., 786 F.3d 510, 527 (7th Cir. 2015) (citing *Doe v. Salvation Army*, 685 F.3d 564, 570 (6th Cir. 2012), quoting Merriam Webster’s Collegiate Dictionary 1115 (10th Ed.1995)). In *Doe*, 685 F.3d at 571, the court noted that the notion of “‘principally engaged’ has been interpreted in other statutory contexts as referring to the primary activities of a business, excluding only incidental activities” (citing *Carrington v. Lawson’s Milk Co.*, No. 86–3264, 1987 WL 36691, at *3 (6th Cir. Mar. 6, 1987) (unpublished opinion) (convenience store not “‘principally engaged in selling food’ for onsite consumption because service was ‘incidental to some other business.’”) (quoting *Newman v. Piggie Park Enters., Inc.*, 377 F.2d 433, 435–36 (4th Cir. 1967) (holding term “principally” does not require a specific percentage); *United States v. Baird*, 85 F.3d 450, 454 (9th Cir. 1996) (construing “principally engaged in selling food for consumption on the premises,” as directed to “the issue of principal and peripheral uses”); *Fazzio Real Estate Co. v. Adams*, 396 F.2d 146, 150 (5th Cir. 1968) (it is “clear” that sales from refreshment counter constituting from eight to eleven percent of gross revenue were “not de minimus [sic] [and] that the operation of the refreshment counter was not an insignificant adjunct of the operation of bowling alley”; thus, refreshment counter was “principally engaged in sale of food for consumption on the premises”).

Moreover, the statute requires that Title VI’s anti-discrimination requirements apply institution-wide if, in the aggregate, the organization is principally engaged in the business of providing any of the services enumerated in the statute. In other words, the conjunction “or” does not mean that only one item on the list *by itself* must be a principal activity. Rather, Title VI covers all operations of a private recipient if it is principally engaged in providing these services alone or in combination. *Runnion*, 786 F.3d at 528 (“There is no reason to think Congress was laying out mutually exclusive conditions.”). In sum, a covered “program or activity” under Title VI broadly applies to entire institutions, except when the institution in question is a private entity that does not serve a public purpose.

It is important to reiterate that even if a private institution does not fit into one of the broad categories of coverage, Title VI covers the recipient’s facility that receives funds.

5. Catch-All/Combinations of Entities

Finally, the term “program or activity” includes the operations of entities formed by any combination of the aforementioned entities. Title VI provides that a “program or activity” includes:

[A]ll of the operations of
(4) any other entity which is established by two or more of the entities described in paragraph (1) [instrumentalities of state or local government], (2) [educational institutions], or (3) [corporations or private entities];
... any part of which is extended Federal financial assistance.

42 U.S.C. § 2000d-4a(4) (emphasis added). This catch-all provision recognizes the complex nature of entities that serve a public purpose. For example, the provision ensures that “a multistate, regional transportation commission which received federal financial assistance would be covered in its entirety, like a state Transportation Department.” Rep. No. 64 at 19, *reprinted in* 1988 U.S.C.C.A.N. at 21.

Unlike the limitations placed on private entities described above, this provision ensures that all of the operations of a partnership between public entities or between a public and private entity, such as a school and a private corporation, would be subject to Title VI. It is the public nature of these hybrid institutions that led Congress to expand Title VI coverage:

[A]n entity which is established by two or more entities described in [paragraphs] (1), (2), or (3) is inevitably a public venture of some kind, i.e., either a government-private effort (1 and 3), a public education-business venture (2 and 3) or a wholly government effort (1 and 2). It cannot be a wholly private venture under which limited coverage is the general rule. The governmental or public character helps determine institution-wide coverage.... Even private corporations are covered in their entirety under (3) if they perform governmental functions, i.e., are “principally engaged in the business of providing education, health care, housing, social services, or parks and recreation.”

Id. at 19–20, *reprinted in* 1988 U.S.C.C.A.N. at 21–22. While coverage under paragraph (4) applies to the hybrid entity; coverage of the separate entities that comprise the partnership or joint venture must be determined independently. *Id.* at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22.

SECTION VI: PROVING DISCRIMINATION – INTENTIONAL DISCRIMINATION

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- B. Proving Intentional Discrimination**
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 - 1. Proof of Systemic or Widespread Discrimination (Pattern or Practice)**
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 - 3. Intentional Discrimination by a Third Party**

A. Introduction

Title VI prohibits discrimination based on “race, color, or national origin . . . under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The purpose of Title VI is simple: to ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination on these bases. Toward that end, Title VI bars intentional discrimination. *See Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 607–08 (1983); *Alexander v. Choate*, 469 U.S. 287, 292–93 (1985). A Title VI discriminatory intent claim alleges that a recipient intentionally treated persons differently or otherwise knowingly caused them harm because of their race, color, or national origin. Agency regulations implementing Title VI also prohibit intentional discrimination based on race, color, or national origin, covering any disposition, service, financial aid, or other benefits provided under the recipient’s program, the determination of the site or location of facilities, or other aspects of program operations. *See, e.g.*, 28 C.F.R. § 42.104(b) (Department of Justice regulations).

Private parties seeking judicial enforcement of Title VI’s nondiscrimination protections must prove intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001). Private parties may also file administrative complaints with federal agencies alleging that a recipient of the agency’s federal financial assistance has engaged in intentional discrimination; the federal agency providing the assistance may investigate these complaints.¹

This section provides an overview of the types of evidence necessary to prove intentional discrimination under Title VI. Much of the discussion in this section relies on judicial precedent developed in private plaintiffs’ intent claims for damages, and therefore focuses on standards applied in that context. Those standards may not always apply to agency investigations, which often follow a non-adversarial model in which the agency collects all relevant evidence and then determines whether the evidence establishes discrimination. Under this model, agencies do not “shift the evidentiary burdens” between complainant and recipient when making findings. The burden-shifting framework may nevertheless serve as a useful paradigm for organizing and analyzing the evidence.

AGENCY PRACTICE TIP

Investigating agencies can look to case law for guidance on proving intentional discrimination, but are not bound by case law concerning burden shifting between plaintiff and defendant (that is, as between a complainant and a recipient). An agency need not use the same sequential process as courts, where a plaintiff first offers prima facie evidence and the defendant then offers rebuttal evidence. Rather, an agency has discretion to gather and evaluate all relevant evidence as part of its initial investigation, or may choose to make a preliminary prima facie finding then require recipients to articulate defenses.

¹ Unlike when seeking judicial enforcement, private parties may file administrative complaints under any theory of liability, including disparate impact. Section VII of the Title VI Legal Manual provides an analysis of the disparate impact theory.

B. Proving Intentional Discrimination

Courts have developed a number of analytical frameworks for assessing intent claims. The elements of a Title VI intent claim derive from and are similar to the analysis of cases decided under the Fourteenth Amendment's Equal Protection Clause² and Title VII of the Civil Rights Act of 1964, as amended.³ Because the Title VI statutory prohibition on discrimination is based on the Equal Protection Clause, the constitutional analysis of intentional discrimination should be applied under Title VI.⁴ See *Grutter v. Bollinger*, 539 U.S. 306, 343–44 (2003) (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978) (opinion of Powell, J.) (“Title VI . . . proscribe[s] only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.”)).

Generally, intentional discrimination occurs when the recipient acted, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment. *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011). While discriminatory intent need not be the only motive, a violation occurs when the evidence shows that the entity adopted a policy at issue “‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Some assume that the intentional use of race should be carefully scrutinized only when the intent is to harm a group or an individual defined by race, color, or national origin. That is not true: the Supreme Court in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989), and *Adarand Constructors, Inc., v. Peña*, 515 U.S. 200, 226 (1995), established that any intentional use of race, whether for malicious or benign motives, is subject to the most careful judicial scrutiny.⁵ Accordingly, the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient].” *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984).

This section discusses a variety of methods of proof to consider when evaluating recipient behavior to determine whether it meets the legal standard for intentional discrimination. A method of proof—or analytical framework—is an established way of organizing the evidence in an investigation or lawsuit in order to show why that evidence amounts to intentional discrimination.

² U.S. Cons. amend. XIV, § 1.

³ 42 U.S.C. § 2000e et seq.

⁴ Note that the analyses under these civil rights laws are not always the same, particularly to the extent that the Equal Protection Clause affords different levels of protection to classifications based on sex and disability vs. race, color, and national origin.

⁵ At times in this section “race” is used to refer to “race, color, and national origin.” This shorthand is used merely for ease of discussion and should not be read as a limitation on the applicability of the principles discussed.

Those methods are as follows:

Methods that focus on direct evidence

- **Express classifications.** Express classifications are the clearest form of direct evidence of discriminatory intent. If a recipient explicitly conditions the receipt of benefits or services on the race, color, or national origin of the beneficiary, or directs adverse action to be taken based on race, color, or national origin, such a policy or practice constitutes an express classification. See Section B.1.a.
- **Comments or conduct by decision-makers as direct evidence of intent.** The direct method of proof typically involves a statement from a decision-maker that expresses a discriminatory motive. See Section B.1.b.

Methods that focus on circumstantial evidence

- **The *Arlington Heights* mosaic of factors.**⁶ This method of proof, originally developed for Equal Protection Clause cases, uses a number of different types of circumstantial evidence that, taken collectively, can demonstrate that the recipient acted, at least in part, because of race, color, or national origin. This framework is most commonly applied in cases alleging discrimination against a group. Agencies can use this method for many different types of cases, but will find it particularly useful where the complaint is about the treatment of a group, not individuals, and the investigation reveals many different kinds of evidence. Agencies should be sure to consider this method where a complaint challenges an expressly neutral practice that has an effect on a larger class defined by race, color, or national origin. For instance, a complaint alleging that a state agency adopted a new policy with the purpose of reducing the number of minority participants could be investigated using this method. See Section B.2.
- **The *McDonnell-Douglas* framework.**⁷ Plaintiffs use this framework, originally developed for Title VII employment cases, to show that a defendant treated similarly situated individuals differently because of race, color, or national origin. The framework is most commonly applied in cases alleging discrimination in individual instances. Agencies should consider using this method for investigations involving the selection of individuals, such as for program participation, benefits, or services, particularly where the recipient provides a nondiscriminatory explanation for its decision. This method is most likely to be helpful where the complaint is about one or a few individuals, and involves easily identifiable

⁶ *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977).

⁷ The *McDonnell-Douglas* framework refers to *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

similarly situated individuals not in the protected class. For instance, a complaint alleging that a state agency denied benefits to a family because of that family's national origin might be investigated using this method. See Section B.3.

More than one type of analysis may apply to facts disclosed in an investigation or trial to determine race-based intent. Agencies and plaintiffs can use them individually or together and may combine both direct and circumstantial evidence. Ultimately, the “totality of the relevant facts” will determine whether the recipient has engaged in intentional discrimination in violation of Title VI. *See Washington v. Davis*, 426 U.S. 229, 242 (1976) (discussing analysis of intentional discrimination generally).

Regardless of the method or methods of proof ultimately employed, the central question remains whether the recipient acted intentionally based on race, color, or national origin. In evaluating the totality of relevant facts, courts and federal funding agencies look to either direct or circumstantial evidence to establish whether a recipient engaged in intentional discrimination. Often, the available proof consists of a combination of these different kinds of evidence, and therefore more than one method of proof may be appropriate. The box below cross-references the major types of evidence with the related methods of proof discussed in this section.

TYPES OF EVIDENCE

Direct evidence. Direct evidence often involves a statement from a decision-maker that expresses a discriminatory motive. Direct evidence can also include express or admitted classifications, in which a recipient explicitly distributes benefits or burdens based on race, color, or national origin. Other than instances where a recipient uses race expressly to achieve diversity or implement a race-based remedy for past discrimination, finding direct evidence is rare; most recipients are circumspect enough to avoid making overtly discriminatory statements. As a result, most Title VI litigation and administrative investigations focus on circumstantial evidence. See methods of proof discussed in Section B.1.

Circumstantial evidence. Circumstantial evidence, also known as indirect evidence, requires the fact finder to make an inference or presumption. *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1320 (11th Cir. 2012). “Circumstantial evidence can include suspicious timing, inappropriate remarks, and comparative evidence of systematically more favorable treatment toward similarly situated [individuals] not sharing the protected characteristic....” *Loyd v. Phillips Bros., Inc.*, 25 F.3d 518, 522 (7th Cir. 1994); *accord Troupe v. May Dep’t Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994). See methods of proof discussed in Sections B.2 and B.3.

Statistical evidence. Statistical evidence can often be critical in a case where the exercise of race-based motive is alleged. A plaintiff or agency investigation can use

statistics in several ways to establish a claim of intentional discrimination. For example, statistics can be used show that an ostensibly race-neutral action actually causes a pattern of discrimination, a racially disproportionate impact, or foreseeably discriminatory results. While statistical evidence is not required to demonstrate intentional discrimination, plaintiffs often successfully use statistics to support, along with other types of evidence, a claim of intentional discrimination. See methods of proof discussed in Sections B.2 and C1.

Finally, it is important for agencies to remember that even if a recipient is found to have engaged in the intentional consideration of race, color, or national origin, this is not the end of the inquiry. Some uses of race are permissible. This is discussed more extensively beginning at page 30.

Title VI case law has traditionally borrowed jurisprudence from other civil rights laws with a similar structure and purpose.⁸ The remainder of this section examines methods of proving intentional discrimination in greater detail, with reference to case law not only under Title VI and the Equal Protection Clause, but also under Title VII; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, among other laws. Importantly, the analyses under these civil rights laws are not always the same, but this discussion identifies principles that are applicable to Title VI.

1. Direct Evidence of Discriminatory Intent

Direct evidence of discriminatory intent is evidence that, “if believed, proves the fact [of discriminatory intent] without inference or presumption.” *Coghlán v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005) (citation omitted).

Occasionally, a recipient official admits to having considered race during the decisional process as a basis for its action. In other instances, a recipient explicitly conditions the receipt of benefits or services on the race, color, or national origin of the beneficiary, or explicitly directs action be taken based on race, color, or national origin. These kinds of requirements are often referred to as “express classifications,” and are the clearest form of direct evidence.

Short of an express classification, other direct evidence of discrimination includes “any statement or document which shows on its face that an improper criterion served as the basis ... for [an] adverse ... action.” *Fabela v. Socorro Indep. Sch. Dist.*, 329 F.3d 409, 415 (5th Cir. 2003). On the other hand, “remarks by non-decisionmakers or remarks unrelated to the decision

⁸ See, e.g., *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998) (“[Title VI] is parallel to Title IX The two statutes operate in the same manner”); *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 346 (11th Cir. 2012) (“Title IX, like the [Rehabilitation Act] was modeled after Title VI, and the text of all three acts [is] virtually identical”); *Darensburg v. Metro. Transp. Comm’n*, 636 F.3d 511, 519 (9th Cir. 2011) (looking to Title VII jurisprudence to analyze Title VI claims).

making process itself are not direct evidence of discrimination.” *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998).

a. Express classifications

The Equal Protection Clause requires strict scrutiny of any government policy or practice that classifies individuals based on race, color, or national origin. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (“[W]hen the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny.”); *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) (applying strict scrutiny to student admissions policies that considered race as a factor). Similarly, Title VI requires recipients to demonstrate that any intentional use of race, color, or national origin classification is “narrowly tailored” to achieve a “compelling” government interest. *Parents Involved*, 551 U.S. at 720.

A recipient’s express or admitted use of a classification based on race, color, or national origin establishes intent without regard to the decision-makers’ animus or ultimate objective. Such classifications demonstrate a discriminatory purpose as a matter of law. *See Miller v. Johnson*, 515 U.S. 900, 904–05 (1995); *see also Wittmer v. Peters*, 904 F. Supp. 845, 849–50 (C.D. Ill. 1995), *aff’d*, 87 F.3d 916 (7th Cir. 1996). “Put another way, direct evidence of intent is ‘supplied by the policy itself.’” *Hassan v. City of New York*, 804 F.3d 277, 295 (3d Cir. 2015) (quoting *Massarsky v. Gen. Motors Corp.*, 706 F.2d 111, 128 (3d Cir.1983) (Sloviter, J., dissenting)). Where a plaintiff demonstrates, or an agency determines, that a challenged policy overtly and expressly singles out a protected group for disparate treatment, “a plaintiff need not prove the malice or discriminatory animus of a defendant . . .” *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1995); *see also Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 473 n.7 (11th Cir. 1999) (“[I]ll will, enmity, or hostility are not prerequisites of intentional discrimination.”). Rather, the focus is on the “explicit terms of the discrimination,” *Int’l Union, United Auto. Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991); that is, how the recipient’s actions specifically deprived or otherwise adversely affected the individual or individuals of access to a federally funded program or benefit. Even benign motivations for racial classifications are presumptively invalid and trigger strict scrutiny in Equal Protection Clause and Title VI cases. *Adarand*, 515 U.S. at 223–24 (1995); *Grutter*, 539 U.S. at 326.

b. Other forms of direct evidence of intent

Even without a direct admission or express policy, a plaintiff may prove intentional discrimination with other forms of direct evidence demonstrating that the “decisionmakers placed substantial negative reliance on an illegitimate criterion in reaching their decision.” *Price*

Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989) (O'Connor, J., concurring);⁹ *Venters v. City of Delphi*, 123 F.3d 956, 972 (7th Cir. 1997) (direct evidence includes “evidence which in and of itself suggests” that someone with managerial authority was “animated by an illegal ... criterion.”). For example, a statement of an official involved in the decision stating that an ostensibly race-neutral action was taken in order to limit minority individuals’ eligibility for a federally funded benefit or program is direct evidence of race-based intent. Even isolated comments may constitute direct evidence of discrimination if they are “contemporaneous with the [adverse action] or causally related to the [adverse action] decision making process.” *Kennedy v. Schoenberg, Fisher & Newman, Ltd.*, 140 F.3d 716, 723 (7th Cir. 1998) (citations omitted).

This type of direct evidence of discriminatory intent does not require “a virtual admission of illegality.” *Venters*, 123 F.3d at 973. For example, direct evidence need not take the form of an admission where the defendant states “I’m [taking this adverse action] because you’re in a protected group.” *Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1044 (7th Cir. 1999); *see Venters*, 123 F.3d at 973. The court in *Venters* explained that “the evidence need not be this obvious to qualify as direct evidence.” *Id.* And the Sheehan court explained why: because such a requirement “would cripple enforcement of the ... discrimination laws.” *Sheehan*, 173 F.3d at 1044. The direct evidence of such remarks must, however, establish that race was an important factor motivating the challenged action. “Stray remarks,” “derogatory comments,” even those uttered by decision-makers, may not constitute direct evidence of discrimination if unrelated to the adverse decision. *Price Waterhouse*, 490 U.S. at 277 (O'Connor, J., concurring); *Fuentes v. Perskie*, 32 F.3d 759, 767 (3d Cir. 1994). Evidence of such remarks or comments is nevertheless important in an intent case, and can help to establish circumstantial or indirect evidence of intent. *Doe v. C.A.R.S. Prot. Plus, Inc.*, 527 F.3d 358, 368 (3d Cir. 2008); *Fitzgerald v. Action, Inc.*, 521 F.3d 867, 877 (8th Cir. 2008) (same); *see also Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1224 (10th Cir. 2015) (citing Kerri Lynn Stone, *Taking in Strays: A Critique of the Stray Comment Doctrine in Employment Discrimination Law*, 77 Mo. L. Rev. 149, 177 (2012) (“[S]tray remarks can prove to be invaluable insights into biases at every level of consciousness that may be rife but invisible within the workplace.... [They] may bespeak a workplace culture in which certain language or sentiments are tolerated and perhaps encouraged or rewarded.”)).

By way of illustration, in *Wilson v. Susquehanna Township Police Dep’t*, 55 F.3d 126 (3d Cir. 1995), a Title VII case, a female plaintiff alleged that she was not promoted because of her sex. The plaintiff’s evidence revealed a number of discriminatory occurrences, including the daily circulation of sexually explicit drawings, the posting of obscene notices (some referring to female employees by name), sexual conversations between officers and female employees, the

⁹ *Price Waterhouse* has been superseded by statute in the employment discrimination context under Title VII, but as discussed below, its framework remains instructive when considering how to prove mixed motives cases in other civil rights contexts.

showing of an x-rated movie and graphic home videos in the station house, the Chief's regular discussion of sex lives and employees' anatomy, the Chief's bemused dismissal of the plaintiff's complaint about an indecent assault committed by an officer, and the Chief's comment that he did not promote the plaintiff because the town manager "wanted a man." *Id.* at 127–29. The court of appeals described that evidence as direct evidence of intentional sex discrimination, explaining that "[t]he record clearly goes beyond 'stray remarks' and evinces strong gender bias in the police department.... This evidence, which included 'conduct or statements by persons involved directly reflecting the discriminatory attitude,' ... constitutes 'direct evidence' of discriminatory animus." *Id.* at 130 (citations and quotations omitted).

In *In re Rodriguez*, 487 F.3d 1001, 1006–08 (6th Cir. 2007), a case originally brought under Michigan's Civil Rights Act, which borrows legal standards from federal civil rights laws including Title VII,¹⁰ the court found that a Hispanic employee was not selected for promotion based on a manager's impression about the applicant's "language" and "how he speaks." This evidence, the court held, was direct evidence of discrimination. Stating that "the [EEOC] recognizes linguistic discrimination as national origin discrimination" and that "discrimination based on manner of speaking can be national origin discrimination," the court found that the plaintiff's "Hispanic speech pattern and accent" played a motivating part in the manager's decision to deny the plaintiff a promotion. *Id.* at 1008–09; *accord*, *Diaz v. Jiten Hotel Mgmt., Inc.*, 762 F. Supp. 2d 319, 337 (D. Mass. 2011) ("racially, sexually, or ageist offensive language is necessarily prejudicial, precisely because it is highly probative").

A clean "direct evidence" case—where direct evidence alone establishes that discrimination was the sole reason for an adverse decision—is rare. *Price Waterhouse*, 490 U.S. at 271 ("[D]irect evidence of intentional discrimination is hard to come by.") (O'Connor, J., concurring). After all, decision-makers seldom will admit that they based decisions on race or ethnic origin, or used either as a criterion. *See, e.g., SECSYS, LLC v. Vigil*, 666 F.3d 678, 686 (10th Cir. 2012).

2. The Arlington Heights Framework

Many cases of intentional discrimination are not proven by a single type of evidence. Rather, many different kinds of evidence—direct and circumstantial, statistical and anecdotal—are relevant to the showing of intent and should be assessed on a cumulative basis.

¹⁰ *See* Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* (2016); *Jackson v. Quanex Corp.*, 191 F.3d 647 (6th Cir.1999)(When an employer is liable under the Michigan Civil Rights Act, it would also be liable under Title VII).

Arlington Heights, 429 U.S. at 266–68, and its progeny set forth a variety of factors probative of intent to discriminate.¹¹ Under this method of proving intent, the court or investigating agency analyzes whether discriminatory purpose motivated a recipient’s actions by examining factors such as statistics demonstrating a “clear pattern unexplainable on grounds other than” discriminatory ones; “[T]he historical background of the decision”; “[T]he specific sequence of events leading up to the challenged decision”; the defendant’s departures from its normal procedures or substantive conclusions, and the relevant “legislative or administrative history.” *Faith Action for Cmty. Equity v. Hawai’i*, No. CIV. 13-00450 SOM, 2015 WL 751134, at *7 (D. Haw. Feb. 23, 2015) (Title VI case citing *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1158–59 (9th Cir. 2013)); see also *Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 819 (4th Cir. 1995) (adding to the *Arlington Heights* factors evidence of a “consistent pattern” of actions of decision-makers that have a much greater harm on minorities than on non-minorities). When a recipient applies different procedural processes or substantive standards to requests of minorities and non-minorities, the use of such different processes or standards, when a non-minority receives more favorable treatment, may raise an inference of discriminatory intent. “These factors are non-exhaustive.” *Pac. Shores Props.*, 730 F.3d at 1159.

AGENCY PRACTICE TIP

Agencies can use the *Arlington Heights* framework for many different types of cases, but will find it particularly useful where the complaint is about the treatment of a group, not individuals, and the investigation reveals many different kinds of evidence. Agencies should be sure to consider this method where a complaint challenges an expressly neutral policy or practice that has an effect on a larger class defined by race, color, or national origin. For instance, an agency could use this method when investigating a complaint alleging that a state agency adopted a new policy with the purpose of reducing the number of minority participants.

In court and agency investigations, evaluation of these factors “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Arlington Heights*, 429 U.S. at 266. Moreover, when a plaintiff relies on the *Arlington Heights* method to establish intent, “the plaintiff need provide very little such evidence ... to raise a genuine issue of fact ...; any indication of discriminatory motive ... may suffice to raise a question that can only be resolved by a fact-finder.” *Pac. Shores Props.*, 730 F.3d at 1159 (citations omitted).

¹¹ Though the *Arlington Heights* test was developed to detect discriminatory intent in the context of a Fourteenth Amendment Equal Protection claim, the test also applies to claims of intentional discrimination under some federal statutes, including Title VI. See *Pac. Shores Props.*, 730 F.3d at 1158 n.21; see also *Gallagher v. Magner*, 619 F.3d 823, 833 (8th Cir. 2010) (Fair Housing Act case applying the *Arlington Heights* factors); *Hallmark Developers, Inc. v. Fulton Cty.*, 466 F.3d 1276, 1283–84 (11th Cir. 2006) (same); *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 579–80 (2d Cir. 2003) (same in Fair Housing Act and Americans with Disabilities Act contexts).

FACTORS/CIRCUMSTANTIAL EVIDENCE PROBATIVE OF INTENT

- Statistics demonstrating a clear pattern of discriminatory effect;
- The historical background of the decision and other decisions on comparable matters;
- The sequence of events leading up to the decision, as compared to other decisions on comparable matters;
- Departures from normal procedures or substantive conclusions;
- Relevant legislative or administrative history; and
- Consistent pattern of actions of decision-makers that impose much greater harm on minorities than on non-minorities.

Critically, *Arlington Heights* directs courts and agencies to engage in a cumulative assessment of the evidence. By way of illustration, in *North Carolina State Conference of NAACP v. McCrory*, No. 1:13CV658, 2016 WL 1650774, at *5 (M.D.N.C. Apr. 25, 2016), plaintiffs challenged provisions of a North Carolina election law, alleging that discriminatory intent to disenfranchise African-American voters motivated the legislature in violation of the Fourteenth and Fifteenth Amendments and the Voting Rights Act. The Fourth Circuit agreed. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). The district court’s error in holding otherwise, the Fourth Circuit explained, “resulted from the court’s consideration of each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis required by *Arlington Heights*.” *Id.* at 233. The district court “missed the forest in carefully surveying the many trees.” *Id.* at 214. Instead, agencies evaluating possible intentional discrimination by recipients must conduct a cumulative assessment of all the available evidence.

This case also illustrates the kinds of evidence relevant to each of the *Arlington Heights* factors described above:

- **Historical background of the decision.** First, the court considered the historical background in the state generally and related to voting in particular, identifying “North Carolina’s history of race discrimination and recent patterns of official discrimination, combined with the racial polarization of politics in the state” as particularly relevant. *Id.* at 223. Against this background of historical discrimination in the state, the court found “the record is replete with evidence of instances since the 1980s in which the North Carolina legislature has attempted to dilute the voting rights of African Americans” and

pointed to the numerous instances of “Department of Justice and federal court determinations have determined that the North Carolina General Assembly acted with discriminatory intent” *Id.* The court found these examples revealed “a series of official actions taken for invidious purposes,” and held that the district court “erred in minimizing these facts.” *Id.* (citing *Arlington Heights*, 429 U.S. at 267).

- **Sequence of events leading to the decision.** Next, the court turned to an examination of the sequence of events leading to the legislature’s passage of the challenged provisions, finding these events “devastating” to the defense. *N.C. State Conf. of NAACP*, 831 F.3d at 227. The court found that the undisputed sequence of events—“the General Assembly’s eagerness to ... rush through the legislative process the most restrictive voting law North Carolina has seen since the era of Jim Crow—bespeaks a certain purpose Although this factor, as with the other *Arlington Heights* factors, is not dispositive on its own, it provides another compelling piece of the puzzle of the General Assembly’s motivation.” *Id.* at 229.
- **Legislative history leading to the decision.** As instructed by *Arlington Heights*, the court also considered the sequence of events described above from the perspective of “legislative history” because such evidence “may be highly relevant, especially where there are contemporaneous statements by members of the decisionmaking body, minutes of its meetings, or reports.” *Id.* (citing *Arlington Heights*, 429 U.S. at 268). The record revealed that the General Assembly requested a report on voting patterns, and that data established that African Americans in North Carolina disproportionately used early voting, same-day registration, and out-of-precinct voting. *N.C. State Conf. of NAACP*, 831 F.3d at 230. The court held that “relying on this data, the General Assembly enacted legislation restricting all—and only—practices disproportionately used by African Americans [W]e cannot ignore the choices the General Assembly made with this data in hand.” *Id.*
- **Impact.** The first *Arlington Heights* factor, statistics demonstrating a clear pattern of discriminatory effect, acknowledges that disparate impact evidence can be probative of discriminatory intent. *Arlington Heights*, 429 U.S. at 266 (discussing the importance of the impact of the official action, including “whether it bears more heavily on one race than another”). Here, the court analyzed the available impact data and held that the same data showing that African Americans disproportionately used each of the voting mechanisms removed by the new provisions also established “sufficient disproportionate impact” for an *Arlington Heights* analysis. *N.C. State Conf. of NAACP*, 831 F.3d at 231.

The court conducted a cumulative assessment of this evidence:

[T]he totality of the circumstances—North Carolina’s history of voting discrimination; the surge in African American voting; the legislature’s knowledge that African Americans voting translated into support for one party; and the swift elimination of the tools African Americans had used to vote and imposition of a new barrier at the first opportunity to do so—cumulatively and unmistakably reveal that the General Assembly used [the new law] to entrench itself.

Id. at 233. Accordingly, when viewed collectively, the evidence in the record established intentional discrimination based on race. *Id.*

Finally, it is important to understand that under the *Arlington Heights* framework, evidence identifying similarly situated comparators is helpful but not required. In this regard, the relationship between the *Arlington Heights* framework and the *McDonnell-Douglas* framework is sometimes misunderstood. As discussed more extensively below in Section B.3., the *McDonnell-Douglas* method of proof requires a showing that the recipient treated one or a few similarly situated individuals differently because of race, color, or national origin. However, plaintiffs alleging intentional discrimination under civil rights statutes “need not demonstrate the existence of a similarly situated entity who or which was treated better than the plaintiff in order to prevail.” *Pac. Shores Props.*, 730 F.3d at 1158-59 (explaining that a plaintiff need not rely on the *McDonnell-Douglas* approach to intentional discrimination but may instead produce circumstantial evidence of intentional discrimination using the *Arlington Heights* method). *McDonnell Douglas* “is not a straightjacket requiring the plaintiff to demonstrate that such similarly situated entities exist” but is just *one* way to prove intentional discrimination. *Id.* at 1159.

Impact evidence. In many cases, including many litigated under *Arlington Heights*, evidence will show that an ostensibly race-neutral practice has had a much more harmful effect on minorities than on non-minorities. *Arlington Heights* instructs courts and agencies to consider “the impact of the official action” including whether “it bears more heavily on one race than another.” 429 U.S. at 266 (citations and quotations omitted). Accordingly, the discriminatory impact of a facially neutral policy or practice (frequently, but not always, demonstrated through the use of statistics) can be used as part of the evidentiary showing in an intentional discrimination case. See *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 902 (D. Ariz. 2013) (awarding injunctive relief to Title VI plaintiffs and finding that plaintiffs demonstrated “racially disparate results” and “additional indicia of discriminatory intent”) (citing *Feeney*, 442 U.S. at 272); see also *Arlington Heights*, 429 U.S. at 264–66; *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690 (9th Cir. 2009) (Title VI and equal protection case finding that statistical evidence was sufficient to create inference of intent where race-neutral precondition to receiving municipal services served to exclude Latino-majority neighborhoods)).

In only rare instances will a showing of disparate impact by itself support a showing of discriminatory intent—for example, where racially variant results cannot be explained on other grounds, such as in cases of a dramatic mismatch between jury representation and the composition of a surrounding community. *Castaneda v. Partida*, 430 U.S. 482, 495–96 (1977). In most instances, however, “impact alone is not determinative, and the Court must look to other evidence.” *Arlington Heights*, 429 U.S. at 266, 267–68 (enumerating factors that indicate evidence of intent) (footnotes omitted).

When attempting to rely on impact evidence in an intent case, the plaintiff must, as an initial matter, precisely identify the “facially neutral policy or practice” at the heart of the discrimination claim. (The Title VI Legal Manual’s disparate impact section discusses this requirement in detail.) In addition, in *Arlington Heights*, the selection of a similarly situated comparator group is a key feature of cases where plaintiffs proffer impact evidence. By its nature, “disparate impact” evidence involves showing a disparity. Plaintiff must show that the extent of harm the policy or practice causes minorities and non-minorities is different. The level or degree of impact that a plaintiff alleging discriminatory intent must show depends on a variety of factors, including the strength of the impact evidence and the strength of other indicators of intent under *Arlington Heights*. But, as one court noted, “[i]t would be improper to posit a quantitative threshold above which statistical evidence of disparate racial impact is sufficient as a matter of law to infer discriminatory intent, and below which it is insufficient as a matter of law.” *Gay v. Waiters’ & Dairy Lunchmen’s Union, Local No. 30*, 694 F.2d 531, 551 (9th Cir. 1982). Because disparate impact is not the only factor in an *Arlington Heights* case, “showing disproportionate impact, even if not overwhelming impact, suffices to establish one of the circumstances evidencing discriminatory intent.” *N. Carolina State Conference of NAACP*, 831 F.3d at 231.

In addition, impact evidence most often involves the presentation of statistical evidence. *Thomas v. Washington Cty. Sch. Bd.*, 915 F.2d 922, 926 (4th Cir. 1990). However, statistical evidence, while extremely beneficial, is not a necessity in impact cases. *Id.* Indeed, a series of “discrete episodes” negatively affecting minorities can raise a plausible inference of discriminatory impact. *McCoy v. Canterbury*, No. 3:10-0368, 2010 WL 5343298, at *5 (S.D.W. Va. Dec. 20, 2010), *aff’d*, 428 Fed. App’x 247 (4th Cir. 2011). Accordingly, non-statistical evidence of harm to minorities and non-minorities that is significantly different will be relevant evidence in an *Arlington Heights* case.

Moreover, statistics alone will seldom prove discriminatory intent. There may be cases where statistics establish “a clear pattern, unexplainable on grounds other than race,” “but such cases are rare.” *Arlington Heights*, 429 U.S. at 266. No matter how “devastating or reliable” the statistics appear to be, *Ward v. Westland Plastics, Inc.*, 651 F.2d 1266, 1270 (9th Cir. 1980) (per curiam), they must reveal that some “invidious discriminatory purpose” is causing the disparate

outcomes. *Arlington Heights*, 429 U.S. at 266; *see also Feeney*, 442 U.S. at 279 (plaintiff must show that the rule was promulgated or reaffirmed “‘because of,’ not merely ‘in spite of,’ its adverse impact on” persons in the plaintiff’s class); *Horner v. Ky. High Sch. Athletic Ass’n*, 43 F.3d 265, 276 (6th Cir. 1994) (citing *Feeney*). As such, and in most instances, “the question whether the facts proved are sufficient to permit a legal inference of discriminatory intent cannot properly be reduced into a mere battle of statistics.” *Gay*, 694 F.2d at 552.¹² Absent a “stark” pattern, then, discriminatory intent requires more than discriminatory impact. *Arlington Heights*, 429 U.S. at 266.

Recipient’s awareness of the impact. Also consistent with the *Arlington Heights* factors is an inquiry into whether the discriminatory impact of the challenged action was foreseeable:

[A]ctions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose.... [T]he foreseeable effects standard [may be] utilized as one of the several kinds of proofs from which an inference of segregative intent may be properly drawn.... Adherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence ... is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn.

Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 464–65 (1979); *see United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009). Foreseeability is a common feature of Title VI and equal protection claims, and allegations that properly package foreseeability together with factors such as impact and history of defendant’s actions, have succeeded.¹³ *See, e.g., N.C. State Conf. of NAACP*, 831 F.3d at 223; *Dowdell v. City of Apopka*, 698 F.2d 1181, 1186 (11th Cir. 1983) (discussing “obviously foreseeable” outcome of the town’s decision to spend nearly all of its revenue-sharing monies on the white community, at the expense of communities of color); *United States v. Bannister*, 786 F. Supp. 2d 617, 665–66 (E.D.N.Y. 2010) (expressing support for using discriminatory impact, foreseeable consequences, and historical background to demonstrate intent in enacting mandatory minimums for crack cocaine, but determining that court could not find intentional discrimination where Second Circuit already made finding on the specific issue under consideration).

¹² For a detailed case analysis of statistical evidence, circumstantial evidence, the strength of each, and the cumulative picture of intent presented by both types of evidence together in the Title VII context, *see Gay*, 694 F.2d at 555–56.

¹³ Similarly, an agency may be able to use impact evidence under the deliberate indifference framework, originally developed to analyze hostile environment harassment claims, to show that the recipient knew a federally protected right was substantially likely to be violated and failed to act despite that knowledge. This approach is closely related to the *Arlington Heights* framework. As in the cases discussed in this section, foreseeability or knowledge of harm is a key feature of this method of proof. *See infra* section C.3.

Additional examples of successful outcomes where impact and foreseeable consequences combine with other *Arlington Heights* factors, such as history of state action, include the following:

- Spanish-speaking food stamp beneficiaries alleged that state agencies administering the state food stamp program continued a policy of failing to ensure bilingual services for food stamp applicants who were limited English proficient. The plaintiffs alleged that the defendants continued this policy while knowing that Spanish-speaking applicants and beneficiaries were being harmed as a consequence. The court found that such knowledge was sufficient to state a Title VI claim that the defendants purposefully acted based on national origin, finding that “disparate impact, history of the state action, and foreseeability and knowledge of the discriminatory onus placed upon the complainants” is the type of circumstantial evidence upon which a case of intentional discrimination is often based. *Almendares v. Palmer*, 284 F. Supp. 2d 799, 806 (N.D. Ohio 2003) (citations omitted)
- A facially neutral NCAA rule (Proposition 16) raising the minimum academic requirements for incoming college athletes to qualify for athletic scholarships and compete in college sports applied to all incoming college athletes but had a statistically greater adverse impact on black athletes. The NCAA was aware that the impact of the proposed rule would reduce the number of black athletes qualifying for athletic scholarships, and adopted the rule specifically to promote higher academic standards among black athletes. The court held that plaintiffs had stated a claim of purposeful discrimination under Title VI. *Pryor v. NCAA*, 288 F.3d 548, 562 (3d Cir. 2002). *Pryor* directly addressed the *Arlington Heights* standards for intentional discrimination, concluding that the plaintiffs met the intent test where the NCAA had actual notice and knowledge of the impact on black athletes, and affirmatively considered that impact in reaching its decision to adopt Proposition 16.¹⁴
- Plaintiffs claimed intentional discrimination based partly on the defendant’s knowledge of the impact that placement of a cement grinding facility would have on the minority community, together with allegations regarding historical practices and a specific sequence of events leading to the placement decision. The court found that the plaintiffs “not only showed that the operation of the cement grinding facility would have a disparate impact upon the predominantly minority community ... but also that the [defendant] was well-aware of the potential disproportionate and discriminatory burden

¹⁴ The *Pryor* court partially distinguished *Feeney*, 442 U.S. at 256, in which the Court refused to find that a Massachusetts veterans’ preference statute deprived women of equal protection of the laws. It noted that the NCAA had actual notice and knowledge of the impact on the minority students, while the Court in *Feeney* could only *infer* that the “legislature almost certainly was aware” that the law benefiting veterans would disadvantage women. *Pryor*, 288 F.3d at 564.

placed upon that community and failed to take measures to assuage that burden.” The court further determined that the plaintiffs had stated a claim of intentional discrimination under Title VI, sufficient to survive the defendant’s motion to dismiss. The court set forth that “the controlling decisions of the Supreme Court and the Third Circuit make it clear that a case of intentional discrimination is often based upon the type of circumstantial evidence which the ... Plaintiffs allege ..., namely, disparate impact, history of the state action, and foreseeability and knowledge of the discriminatory onus placed upon the complainants.” *S. Camden*, 254 F. Supp. at 496–97 (citing *Arlington Heights*, 429 U.S. at 267; *Penick*, 443 U.S. at 465 (1979); *Pryor*, 288 F.3d at 563).¹⁵

3. The *McDonnell-Douglas* Framework

Another common way to prove intentional discrimination is to establish that a recipient treated similarly situated individuals differently because of race, color, or national origin.

1) Step 1—The *prima facie* case

Plaintiff must first prove a *prima facie* case of discrimination by a preponderance of the evidence. To establish a *prima facie* case of intentional discrimination under Title VI using the *McDonnell-Douglas* framework from Title VII, a plaintiff typically shows that he or she is a member of a particular protected group, was eligible for the recipient’s program, activity or service, and was not accepted into that program or otherwise treated in an adverse manner, and that an individual who was similarly situated with respect to qualifications, but was not in the plaintiff’s protected group was given better treatment. *See, e.g., Brewer v. Bd. of Trs. of Univ. of Ill.*, 479 F.3d 908, 921 (7th Cir. 2007) (Title VI case where court found that plaintiff’s case “falls apart because of a failure to locate a similarly situated individual”).¹⁶

¹⁵ In a subsequent proceeding, the court granted summary judgment for the defendants on the issue of intentional discrimination under Title VI by noting that “assuming, *arguendo*, that Plaintiffs are correct that ‘[t]he disparate impact of [issuing the permit to the defendant] was clearly [foreseeable]’ to [the defendants], Pls.’ Opp. at 71, such a foreseeable impact is of no aid to Plaintiffs at this juncture because it, alone, is insufficient to establish a constitutional violation.” *S. Camden Citizens in Action v. N.J. Dep’t of Env’tl. Prot.*, No. Civ. A. 01-702 (FLW), 2006 WL 1097498 at *36 (D.N.J. Mar. 31, 2006) (citing *Penick*, 443 U.S. at 465). In so ruling, the court found insufficient evidence of *Arlington Heights* factors alleged at the motion to dismiss stage, such as a history of discrimination on the part of the defendant. *S. Camden*, 2006 WL 1097498 at *26–28. The court determined that, in the absence of the other *Arlington Heights* factors raised at the motion to dismiss stage, foreseeable impact alone is insufficient to demonstrate intent. *Penick* has cautioned that “disparate impact and foreseeable consequences, without more, do not establish a constitutional violation.” *Penick*, 443 U.S. at 464. *See also Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 536 n.9 (1979) (foreseeable adverse impact may be relevant evidence in proving purposeful discrimination, but foreseeability by itself has not been held to make out a case of purposeful discrimination).

¹⁶ The elements of a *prima facie* case are the same under both Title VI and VII. *Paul v. Theda Med. Ctr., Inc.*, 465 F.3d 790, 794 (7th Cir. 2006); *Fuller v. Rayburn*, 161 F.3d 516, 518 (8th Cir. 1998).

AGENCY PRACTICE TIP

Agencies can use the *McDonnell-Douglas* framework for investigations involving the selection of individuals, such as for program participation, benefits, or services, particularly where the recipient provides a nondiscriminatory explanation for its decision. This method is most likely to be helpful where the complaint is about one or a few individuals, and involves easily identifiable similarly situated individuals not in the protected class. For instance, a complaint alleging that a state agency denied benefits to a family because of that family's national origin might be investigated using this method.

With respect to what constitutes adverse action or “harm,” there are “no bright-line rules,” *Wanamaker v. Columbian Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997), so courts and agencies must make that determination in each case. As such, whether conduct rises to the level of “adverse action” is a fact-specific inquiry. The harm need not be physical in nature, or even the type of harm that would permit an award of compensatory damages. For example, the Supreme Court has held that intentional racial segregation is a harm in and of itself. *See Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). Similarly, the stigma that intentional discrimination may cause is a cognizable harm. *See generally Johnson v. California*, 543 U.S. 499, 507 (2005) (“racial classifications ‘threaten to stigmatize individuals by reason of their membership in a racial group’”) (quoting *Shaw v. Reno*, 509 U.S. 630, 643 (1993)). The provision of fewer or inferior services or benefits to a person or class of persons will satisfy the adversity requirement, but adversity can be established even without the loss of specific services or benefits; threatened or imminent harm can satisfy the adverse action requirement.

Moreover, Title VI’s broad nondiscrimination mandate means that investigating agencies generally should take an inclusive approach to determining legally sufficient harms. Title VI’s plain language supports this approach. The statute states that no person shall on the ground of race, color, or national origin “be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Agency regulations further state that recipients may not administer their programs or activities in a manner that “den[ies] any individual *any disposition, service, financial aid, or benefit* provided under the program,” 28 C.F.R. § 42.104(b)(1)(i) (DOJ) (emphasis added), or “restrict[s] an individual *in any way* in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program,” *Id.* § 42.104(b)(1)(iv) (emphasis added). This language is best read to encompass a broad range of “adverse actions” that may be caused by a recipient’s administration of its program.¹⁷

¹⁷ The DOJ regulations quoted here are similar to those of other agencies.

For a more detailed discussion of case law addressing the harms cognizable under Title VI, see Section VII, Section C.1.b., which discusses the threshold showing of adversity required under the disparate impact standard.

2) Step 2 – The defendant must articulate a legitimate non-discriminatory reason

If the plaintiff establishes a prima facie case, the burden in court shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the challenged action. *EEOC v. Boeing Co.*, 577 F.3d 1044, 1049 (9th Cir. 2009). The defendant’s explanation of its legitimate reasons must be clear and reasonably specific; not all proffered reasons would be legally sufficient to rebut a prima facie case. *See Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254–55, 258 (1981). For example, in the employment context, a defendant may not merely state that the employment decision was based on the hiring of the “best qualified” applicant, but must provide specifics regarding that applicant’s qualifications, such as seniority, length of service in the same position, personal characteristics, general education, or experience in comparable work, and must demonstrate why that person’s qualifications were considered superior to those of the plaintiff. *See Steger v. Gen. Elec. Co.*, 318 F.3d 1066, 1075–76 (11th Cir. 2003).

3) Step 3 – The plaintiff must demonstrate pretext

If the defendant meets the Step 2 burden, the burden shifts back to the plaintiff to demonstrate that the proffered reason is false—that is, that the nondiscriminatory reason(s) the defendant gives for its actions are not the true reasons and are actually a pretext for the exercise of prohibited discriminatory intent. *Brooks v. Cty. Comm’n of Jefferson Cty.*, 446 F.3d 1160, 1162–63 (11th Cir. 2006) (addressing a Title VII race discrimination claim). A plaintiff can show pretext by pointing to “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” in the defendant’s proffered legitimate reasons for its action, such that a reasonable fact finder could rationally find them unworthy of credence. *Id.* at 1163 (quoting *Jackson v. Ala. State Tenure Comm’n*, 405 F.3d 1276, 1289 (11th Cir. 2005)); *Mickelson v. N.Y. Life Ins. Co.*, 460 F.3d 1304, 1315 (10th Cir. 2006). Plaintiffs can, for example, present evidence that the defendant’s stated reasons for taking the adverse action were false; the defendant acted contrary to a written policy setting forth the action the defendant should have taken under the circumstances; or the defendant acted contrary to an unwritten policy or practice when making the decision. *See Plotke v. White*, 405 F.3d 1092, 1102 (10th Cir. 2005). A plaintiff may also show pretext through evidence that the “employer’s proffered non-discriminatory reasons [were] either a *post hoc* fabrication or otherwise did not actually motivate the employment action” *Fuentes*, 32 F.3d at 764.

AGENCY PRACTICE TIP

As mentioned previously, certain procedural aspects of the methods of proof developed in the litigation context do not transfer to the administrative context. Here, the *McDonnell-Douglas* burden-shifting test that applies in litigation to determine whether an institution has engaged in intentional discrimination does not necessarily apply in the context of agency enforcement activities prior to administrative litigation. An agency is free to collect and analyze the evidence described in the steps below as part of its initial investigation, or may choose to make a preliminary prima facie finding and require the recipient to articulate its defense as a next step.

The Supreme Court has cautioned that the four *McDonnell-Douglas* elements are not “an inflexible formulation.” *Teamsters*, 431 U.S. at 358. Further, as previously noted, agency Title VI investigations generally follow a non-adversarial model that does not involve burden-shifting. Nevertheless the *McDonnell-Douglas* framework may be useful for complaint investigations, particularly where the investigation uncovers evidence of similarly situated comparators who were treated differently or better. The example below, from joint DOJ and Department of Education guidance, illustrates how the *McDonnell-Douglas* framework would inform an administrative investigation.¹⁸

ILLUSTRATION: McDONNELL DOUGLAS FRAMEWORK APPLIED TO INVESTIGATION OF ALLEGED DISCRIMINATORY SCHOOL DISCIPLINE

Complaint. Plaintiff alleged discrimination after a school imposed different disciplinary sanctions on two students in the sixth grade—a non-Hispanic student and a Hispanic student—who engaged in a fight. Both students had similar disciplinary histories, having each previously received after-school detention for minor infractions. The Hispanic student received a three-day out-of-school suspension for the student’s involvement in the fight, while the non-Hispanic student received a two-day out-of-school suspension for the same misconduct, raising a concern that the students were treated differently based on race.

Based on these facts and circumstances, the Departments of Education and Justice would make an initial determination that the students were **similarly situated**, as they were involved in the same incident and have similar discipline records. If the school provided evidence of facts and circumstances surrounding the incident that would constitute a **legitimate, nondiscriminatory reason** for the different treatment, such as evidence that it disciplined the Hispanic student more severely because the student instigated the fight and directly threatened school officials who tried to break up the fight, then these facts and circumstances might constitute a nondiscriminatory reason for the different treatment. If

¹⁸ Dep’t of Justice and Dep’t of Educ., “Dear Colleague” Letter on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

the school failed to provide a legitimate nondiscriminatory reason for imposing a different sanction on either student, the Departments could find that the school had violated Title VI.

If, however, the school did provide a legitimate, nondiscriminatory reason for the different sanction, the Departments would probe further to determine whether the reason given for the enhanced sanction was an accurate statement of the reasons for different treatment of the two students, or constituted a **pretext for racial discrimination**. In making this determination, the Departments would request and consider information such as witness statements, codes of conduct, and student disciplinary records. The Departments would then evaluate, among other things, whether the school conformed to its written policies; whether the Hispanic student did, in fact, instigate the fight; and whether the school had previously imposed a higher sanction on non-Hispanic students who had instigated fights.

C. Other Issues Affecting Title VI Cases Involving Possible Intentional Discrimination

1. Proof of Systemic or Wide-Spread Discrimination (Pattern or Practice Discrimination)

Principles similar to those discussed above may be used to establish that a recipient engaged in widespread discrimination in violation of Title VI. In these cases, one means of proving intentional discrimination is through circumstantial evidence showing a statistical disparity that affects a large number of individuals. Agencies investigating complaints alleging widespread discrimination may find useful guidance in Title VII case law that discusses “pattern or practice” discrimination. The phrase “pattern or practice” can be used to describe a systemic violation of Title VI, regardless of the method of proof employed. Although statistical evidence is usually used to establish a pattern or practice of intentional discrimination, it is not required to establish wide-spread or systemic discrimination. This section focuses on the use of statistical evidence of disparity to establish a pattern showing different treatment based on race, color, or national origin.

In *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), a case brought under the “pattern or practice” provision of Title VII, the Court stated that “statistics showing racial or ethnic imbalance are probative ... because such imbalance is often a telltale sign of purposeful discrimination.” *Id.* at 339 n.20. Accordingly, statistical evidence of a sufficiently “gross disparity” between the affected population and the general population may establish an inference of intentional discrimination. *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307–08 (1977) (“Where gross statistical disparities can be shown, they alone may in a proper case constitute *prima facie* proof of a pattern or practice of discrimination.”).

As previously noted, the term “pattern or practice” can be used broadly to refer to systemic discrimination. The term “pattern or practice” also refers to a technical claim type authorized by various civil rights statutes. These statutes use the term to define the authority of the Attorney General or private parties to bring certain claims in court. *See, e.g.*, Title VII, 42 U.S.C. § 2000e-

6(a); The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141(b); The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c)(3). A Title VII pattern or practice case, for example, will demonstrate that an employer is taking action that causes the same kind of harm to a great number of individuals. In *Teamsters*, the employer used job transfer policies that punished individuals, primarily minorities, who tried to transfer from less desirable jobs to more desirable ones. The “pattern or practice” that was challenged harmed many minorities in precisely the same manner. While Title VI does not expressly include a “pattern or practice” claim, principles developed in these contexts and discussed below can nevertheless inform the investigation and analysis of Title VI claims. *See, e.g., Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (class action alleging pattern or practice of racial profiling by law enforcement agency in violation of Title VI and the Fourth and Fourteenth Amendments); Dep’t of Justice, Investigation of Los Angeles County Sheriff’s Department Stations in Antelope Valley (June 28, 2013) (Title VI pattern or practice violation).¹⁹

For Title VI, that kind of widespread or broad discriminatory practice is often viewed or described as a claim of “systemic discrimination”—a practice that harms a large number of minority individuals in the same manner. For example, were a written test used to determine eligibility for a federally funded benefit or program, and the test resulted in a much higher percentage of minorities than non-minorities being determined ineligible for the benefit or access to the program, that might present a case of systemic discrimination. The method of proof used in pattern or practice cases under other statutes can be applied to these kinds of Title VI cases.

To prove such systemic discrimination using this method in a Title VI case, the plaintiff must show that discrimination was the recipient’s standard operating procedure; that is, the plaintiff must “prove more than the mere occurrence of isolated or accidental or sporadic discriminatory acts.” *EEOC v. Joe’s Stone Crab, Inc.*, 220 F.3d 1263, 1286–87 (11th Cir. 2000) (quoting *Teamsters*, 431 U.S. at 336 (internal quotation marks omitted)). Rather, the plaintiff must establish by a preponderance of the evidence that discrimination is the company’s “regular rather than unusual practice.” *Joe’s Stone Crab*, 220 F.3d at 1287 (quoting *Teamsters*, 431 U.S. at 336). A plaintiff in a pattern or practice case can prove that discrimination was the defendant’s “standard operating procedure” by, among other things, presenting statistical evidence of similarly situated individuals not in the protected class who were treated better than those in the protected class. *Craik v. Minn. State Univ. Bd.*, 731 F.2d 465, 470 (8th Cir. 1984).

In a case alleging such pervasive or systemic discrimination, the plaintiff need not initially show discrimination against any particular person; rather the critical showing at the prima facie stage is one of a pervasive policy of intentional discrimination affecting many individuals. *See Teamsters*, 431 U.S. at 360; *Chin v. Port Auth. of N.Y. & N.J.*, 685 F.3d 135, 147 (2d Cir. 2012)

¹⁹ The report of investigation is located on the following website: <http://www.justice.gov/crt/special-litigation-section-cases-and-matters> (search “Antelope”; last visited Sept. 15, 2016).

(noting that in such cases “the government need not demonstrate specific losses to specific individuals to establish that injunctive relief is appropriate”). Once the plaintiff has established a prima facie case, the defendant can rebut it by either demonstrating that the plaintiff based his or her statistical calculations on faulty data, flawed computations, or improper methodologies, or by introducing alternative statistical evidence. *Teamsters*, 431 U.S. at 360 & n.46. As in other disparate treatment cases, the ultimate burden of persuasion rests with the plaintiff. *Id.* at 362 n.50 (citing *McDonnell-Douglas*, 411 U.S. at 804–06). If the defendant fails to rebut the inference that arises from the plaintiff’s prima facie case, the court can conclude “that a violation has occurred.” *Id.* at 361.

AGENCY PRACTICE TIP

As emphasized above in the *McDonnell-Douglas* discussion, certain procedural aspects of methods of proof developed in the litigation context do not transfer to the administrative context. Here, the Title VII burden-shifting test for formal “pattern or practice” claims that applies in litigation to determine whether an institution has engaged in intentional discrimination does not necessarily apply in the context of agency enforcement activities prior to litigation. An agency is free to collect and analyze all the evidence described in this section as part of its initial investigation, or may choose to make a preliminary prima facie finding and require the recipient to articulate its defense as a next step.

As previously stated, statistics typically are used to help establish that a pattern of discrimination based on race, color, or national origin was the recipient’s “standard operating procedure.” *Teamsters*, 431 U.S. at 336; *Hazelwood*, 433 U.S. at 307. Statistics showing racial or ethnic imbalance are probative in pattern or practice cases because a clear and significant imbalance based on race or ethnicity is often an indication of purposeful discrimination. *Teamsters*, 431 U.S. at 339 n.20; *Lujan v. Franklin Cty. Bd. of Educ.*, 766 F.2d 917, 929 (6th Cir. 1985). In these cases, most often, statistics are “coupled with anecdotal evidence of the ... intent to treat the protected class unequally.” *Mozee v. Am. Commercial Marine Serv. Co.*, 940 F.2d 1036, 1051 (7th Cir. 1991).²⁰ Statistical evidence can sometimes serve by itself to establish a prima facie case in the pattern or practice context, in lieu of comparative evidence pertaining to each class member. *Teamsters*, 431 U.S. at 336; *Hazelwood*, 433 U.S. at 307–08 (“Where gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a

²⁰ Note that “the absence of statistical evidence [will not] invariably prove fatal in every pattern or practice case. [In employment cases,] [w]here the overall number of employees is small, anecdotal evidence may suffice.” *In re W. Dist. Xerox Litig.*, 850 F. Supp. 1079, 1084 (W.D.N.Y. 1994); accord, *Pitre v. Western Elec. Co.*, 843 F.2d 1262, 1268 (10th Cir. 1988); *Haskell v. Kaman Corp.*, 743 F.2d 113, 119 (2d Cir. 1984). Conversely, in certain cases, “a plaintiff’s statistical evidence alone might constitute a prima facie case.” *Coates v. Johnson & Johnson*, 756 F.2d 524, 532 n.6 (7th Cir. 1985) (citing *Segar v. Smith*, 738 F.2d 1249, 1278 (D.C. Cir. 1984)). “Neither statistical nor anecdotal evidence is automatically entitled to reverence to the exclusion of the other.” *Id.* at 533. However, “[w]hen one type of evidence is missing altogether, the other must be correspondingly stronger for plaintiffs to meet their burden.” *In re W. Dist. Xerox Litig.*, 850 F. Supp. at 1085. Compare *Chisholm v. USPS*, 665 F.2d 482, 495 (4th Cir. 1981) (twenty class plaintiffs was sufficient to support the statistical evidence) with *Ste. Marie v. E. R.R. Ass’n*, 650 F.2d 395, 406 (2d Cir. 1981) (seven discriminatory acts coupled with problematic statistical evidence were insufficient to support finding pattern or practice discrimination).

pattern or practice of discrimination.”) As one court explained, “strong statistics may prove a case on their own, while shaky statistics may be insufficient unless accompanied by additional evidence.” *EEOC v. O & G Spring & Wire Forms Specialty Co.*, 38 F.3d 872, 876 (7th Cir. 1994) (citing *Teamsters*, 431 U.S. at 340).

While there is no “rigid mathematical formula” for determining whether a disparity is significant, *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994–95 (1988), courts have adopted various tests to aid them in making this determination. For example, some courts have looked to whether the disparity is statistically significant. *Hazelwood*, 433 U.S. at 308 n.14 (an inference of discrimination will generally arise where “the difference between the expected value and the observed number is greater than two or three standard deviations”) (quoting *Castaneda*, 430 U.S. at 496 n.17).²¹ Other courts have looked at whether the disparity is both statistically and practically significant. See *Thomas v. Metroflight, Inc.*, 814 F.2d 1506, 1510 n.4 (10th Cir. 1987) (suggesting that courts may require, in addition to statistical significance, that the observed disparity be substantial). Still other courts have recognized the usefulness of multiple regression analyses, a statistical tool for understanding the relationship between two or more variables where there are several possible explanations for a given outcome, which, in turn, aids in isolating the most relevant variable and determining its effect on the outcome. See, e.g., *Bazemore v. Friday*, 478 U.S. 385, 400 (1986) (observing the usefulness of multiple regression analysis, even one that did not include all measurable variables).

Here are a few cases in which systemic discrimination was proved:

- Latino motorists were deprived of constitutional rights as a result of being detained by a law enforcement agency conducting “saturation patrols” or “sweeps” targeting Latinos suspected of being illegally present in the country. Law enforcement deputies engaged in a pattern of racially profiling Latinos for vehicle stops. *Melendres*, 695 F.3d at 998 (addressing Title VI and equal protection claims).
- The deliberate and systematic exclusion of women from food server positions based on sexual stereotypes associating a “fine-dining ambience” with all-male food service may amount to a pattern or practice. While the court ultimately remanded the case because of conflicting witness testimony and conclusions drawn by the lower court, the decision set forth certain guideposts regarding the kind of evidence that may prove helpful to establish that discrimination was the defendant’s “standard operating procedure.” For

²¹ However, “[t]here is no minimum statistical threshold” mandating that plaintiff has demonstrated a violation. *Waisome v. Port Auth. of N.Y. & N.J.*, 948 F.2d 1370, 1376 (2d Cir. 1991); accord *Chin v. Port Auth. of N.Y. & N.J.*, 685 F.3d 135, 153 (2d Cir. 2012). Courts should take a “‘case-by-case approach’ in judging the significance or substantiality of disparities, one that considers not only statistics but also all the surrounding facts and circumstances.” *Waisome*, 948 F.3d at 1376; *Chin*, 685 F.3d at 153 (quoting *Waisome*).

example, the court noted the testimony of several witnesses who described the defendant's active discouragement of women applying for employment. The court explained that a plaintiff may establish systemic discrimination "through a combination of strong statistical evidence of disparate impact coupled with anecdotal evidence of the employer's intent to treat the protected class unequally." [Further,] direct evidence of an intent to discriminate' may be used to establish a pattern or practice claim." *Joe's Stone Crab Inc.*, 220 F.3d at 1285, 1287 (Title VII case) (citing *Mozee*, 940 F.2d at 1051, and *Lujan*, 766 F.2d at 929 n.15).

- Defendant's motion for partial summary judgment was denied where the EEOC argued that the defendant's "standard operating procedure—its regular rather than unusual practice"—was to ignore most (if not all) of its female employees' complaints that they were individually, or as a group, being subjected to a sexually hostile and abusive environment. The alleged offensive conduct included unwelcome sexual advances, demands for sexual favors, and other offensive verbal and physical conduct of a sexual nature. The court held that the employer was aware of this possible sexual harassment and its failure to act indicated that it tolerated individual acts of sexual harassment. *EEOC v. Mitsubishi Motor Mfg. of Am.*, 990 F. Supp. 1059, 1069 (C.D. Ill. 1998) (Title VII case).

2. Permissible Use of Race

It is critical for agencies to be aware that the exercise of a race-based motive does not mean that the recipient's actions automatically violate Title VI. The Supreme Court has held that strict judicial scrutiny applies to a governmental entity's intentional use of race, a standard that applies through Title VI to any recipient of Title VI funds. The Court has also held that strict scrutiny does not automatically invalidate the use of race; race may be used when the government has a compelling interest supporting its use, and that use is narrowly tailored to support the stated compelling interest. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007).

Moreover, agency Title VI implementing regulations recognize circumstances under which recipients' consideration of race may be permissible. First, when "administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination." 28 C.F.R. 42.104(b)(6)(1) (DOJ regulations). Second, "[e]ven in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin." 28 C.F.R. 42.104(b)(6)(2) (DOJ regulations).

Compelling governmental interests, thus far, have included remedying the effects of past discrimination, *United States v. Paradise*, 480 U.S. 149, 161 (1987), and achieving the benefits of diversity in higher education, *Grutter v. Bollinger*, 539 U.S. 303, 333 (2003), and law enforcement, *Wittmer v. Peters*, 87 F.3d 916, 920 (7th Cir. 1996). In addition, a recipient has more latitude to pursue one of these goals through actions that do not award benefits based solely on an individual's race, color, or national origin. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (distinguishing between race conscious mechanisms to achieve diversity in public schools, such as strategic site selection of new schools, and approaches that treat specific individuals differently based on race); *see also Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 545–46 (3d Cir. 2011) (facially race neutral plan that involved assignment of students based on where they live did not trigger strict scrutiny).

Classifications of individuals based on race, color, or national origin cannot avoid strict scrutiny merely because the recipient asserts a very important interest, such as a public safety justification. “The gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 42 (2000). “No matter how tempting it might be to do otherwise, [courts] must apply the same rigorous standards even where national security is at stake.” *Hassan v. City of New York*, 804 F.3d 277, 306 (3d Cir. 2015). In *Hassan*, the Third Circuit reversed the lower court, ruling that plaintiffs had alleged a viable claim of intentional discrimination where the New York Police Department followed a facially discriminatory policy in surveilling Muslim individuals and businesses in New York and New Jersey, and that this can amount to “direct evidence of intent.” *Id.* at 295; *see also Johnson v. California*, 543 U.S. 499, 505–06 (2005) (racial classifications for penological purposes, such as controlling gang activity in prison, subject to strict scrutiny); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885–87 (1975) (law enforcement need “does not justify stopping all Mexican-Americans to ask if they are aliens”).

Once a compelling interest is established, a recipient must still demonstrate that it has satisfied narrow tailoring; in other words, that it is using race in the most limited manner that will still allow it to accomplish its compelling interest. *Parents Involved*, 551 U.S. at 720. “Even in the limited circumstance when drawing racial distinctions is permissible to further [an important or] compelling state interest, [the recipient] is still ‘constrained in how it may pursue that end.’” *Grutter*, 539 U.S. at 333 (quoting *Shaw v. Hunt*, 517 U.S. 899, 908 (1996)). Strict scrutiny requires that the decision-maker “ultimately be satisfied that no workable race-neutral alternatives would” further the compelling interest “‘about as well and at tolerable administrative expense.’” *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2420 (2013) (quoting *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 280 n.6 (1986)). In addition, the relationship between the stated justification and the discriminatory classification must “be substantiated by objective evidence.” *Patrolmen’s Benevolent Ass’n of New York v. City of New York*, 310 F.3d 43, 53 (2d Cir. 2002). “[M]ere speculation or conjecture is insufficient,” *id.*, as are appeals to “‘common sense’ which

might be inflected by stereotypes,” *Reynolds v. City of Chicago*, 296 F.3d 524, 526 (7th Cir. 2002).

By way of illustration, in some instances police departments have used race or national origin to direct law enforcement activities, and have attempted to justify their conduct by noting that specific individuals from that race or national origin group engaged in illegal activity. Courts consistently reject this kind of stereotyping when examining expressly discriminatory law enforcement policies. *See, e.g., Whren v. United States*, 517 U.S. 806, 813 (“the Constitution prohibits selective enforcement of the law based on considerations such as race”). One court, in ruling that a police department’s policy of focusing on Hispanic persons in immigration enforcement was discriminatory, held “there is no legitimate basis for considering a person’s race in forming a belief that he or she is more likely to engage in a criminal violation and the requisite ‘exact connection between justification and classification’ ... is lacking.” *Melendres*, 989 F. Supp. 2d at 901 (quoting *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003)); *see also Floyd v. City of New York*, 959 F. Supp. 2d 540, 587 (S.D.N.Y. 2013) (rejecting the City’s suggestion that law-abiding members of some racial groups have a greater tendency to appear suspicious than members of other racial groups, ruling that a “stop and frisk” program was racially discriminatory).

Similarly, in *Hassan*, an Equal Protection Clause case involving an express religious classification, the Third Circuit held that the NYPD’s blanket monitoring of the Muslim community after the September 11 attacks failed strict scrutiny because the surveillance program was not narrowly tailored. The Third Circuit compared the City’s public safety justification to the infamous *Korematsu* case, in which the Supreme Court uncritically accepted the government’s national security justification for overt discrimination, leading to the wartime imprisonment of American citizens of Japanese ancestry based solely on national origin.²² The *Hassan* court stated:

We have learned from experience that it is often where the asserted interest appears most compelling that we must be most vigilant in protecting constitutional rights. “[H]istory teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure.” *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 635 (1989) (Marshall, J., dissenting); *see also Grutter*, 539 U.S. at 351 (Scalia, J., concurring in part and dissenting in part) (“The lesson of *Korematsu* is that national security constitutes a ‘pressing public necessity,’ though the government’s use of [a suspect classification] to advance that objective must be [appropriately] tailored.”); *Skinner*, 489 U.S. at 635 (Marshall, J. dissenting) (“The World War II relocation-camp cases and the Red scare and McCarthy-era internal subversion cases are only the most extreme reminders that when we allow fundamental freedoms to be

²² *Korematsu v. United States*, 324 U.S. 885 (1944).

sacrificed in the name of real or perceived exigency, we invariably come to regret it.” (citations omitted)).

Hassan, 804 F.3d at 306–07.

Obviously, when to determine that a recipient’s consideration of race is permissible is complex, and is not extensively discussed here. Guidance documents from the Departments of Justice and Education review applicable legal principles and set out detailed considerations for educational institutions. See Dep’t of Educ. and Dep’t of Justice, “Dear Colleague” Letter on the U.S. Supreme Court ruling in *Schuette v. Coalition to Defend Affirmative Action* (May 6, 2014); Dep’t of Educ. and Dep’t of Justice, “Dear Colleague” Letter and Guidance Documents on the Voluntary use of Race (Dec. 2, 2011). These also may be useful in understanding how and when recipients may consider race in other contexts. Federal investigating agencies are encouraged to review applicable guidance documents and case law, and to consult their legal counsel or the Civil Rights Division for assistance applying applicable legal principles to specific situations. The Department of Education’s Office for Civil Rights is also available to provide assistance about the use of race in the educational context.

3. Intentional Discrimination by a Third Party

Hostile environment harassment is another form of intentional discrimination prohibited by Title VI not discussed here extensively. When the recipient does not create the hostile environment, but a third party, who neither speaks for nor represents the recipient, is responsible, the hostile environment framework focuses on the recipient’s obligation to respond adequately to the third party’s discriminatory conduct. Both courts and federal agencies have addressed this circumstance in the context of hostile environment discrimination in schools.

A recipient violates Title VI if (1) a third party (e.g., a fellow student) harasses a program participant or beneficiary based on race, color, or national origin and the harassing conduct is sufficiently serious to deny or limit the individual’s ability to participate in or benefit from the program or activity (i.e., the harassment creates a hostile environment); (2) the recipient knew or reasonably should have known about the alleged harassment, i.e., actual or constructive notice; and (3) the recipient fails to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and address its effects, as appropriate. A recipient is liable under Title VI for its own conduct when it fails to take adequate steps to address discriminatory harassment.²³

²³ Dep’t of Educ. Off. for Civ. Rts., “Dear Colleague” Letter: Harassment and Bullying, (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; see also Dep’t of Educ. Complaint Resolution Letter, *Richmond Heights School District (OH)*, No. 15-11-1134 (May 11, 2012); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 66 Fed. Reg. 5512–01 (Jan. 19, 2001).

Liability in private suits for monetary damages involving student-on-student harassment lies “only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities.” *Davis v. Monroe Cty. Sch. Bd.*, 526 U.S. 629, 633 (1999). Often, but not always, termed “deliberate indifference” cases, the standard of proof has been most commonly applied to harassment claims, particularly sex- and race-based claims. However, courts have recognized the standard in cases involving other forms of discriminatory conduct. *See, e.g., Blunt v. Lower Merion School District*, 767 F.3d 247, 271–73 (3d Cir. 2014) (plaintiffs may establish a school district’s liability under Title VI for racially motivated student assignments through a deliberate indifference theory).

Similarly, a private plaintiff or investigating agency may be able to use evidence that a recipient knew or should have known about a third party’s intentionally discriminatory conduct and failed to act despite that knowledge.

SECTION VII: PROVING DISCRIMINATION – DISPARATE IMPACT

- A. Introduction**
- B. Sandoval and the Critical Role of the Federal Funding Agencies**
- C. Proving a Violation of the Disparate Impact Standard**
 - 1. Establishing an Adverse Disparate Impact**
 - a. Identifying the facially neutral policy or practice
 - b. Establishing adversity/harm
 - c. Establishing disparity
 - i. Identifying the protected class
 - ii. Determining the need for statistical evidence
 - iii. Relevant comparator population
 - (a) Comparator groups that include the total group to which the policy was applied
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 - iv. Determining the significance of the disparity
 - d. Establishing causation
 - e. Agency approaches to defining adverse disparate impact
 - 2. The Recipient's Substantial Legitimate Justification**
 - a. Is the proffered justification legitimate, integral to the recipient's institutional mission, and important?
 - i. Legitimate
 - ii. Integral
 - iii. Important
 - b. Does the challenged policy or practice bear a demonstrable relationship to the recipient's stated objective?
 - c. Special considerations: site selection or facility closure
 - 3. Less Discriminatory Alternatives**
 - a. Evidentiary burdens
 - b. Specificity of evidence of alternatives and relationship to the recipient's mission
- D. Agency Data Collection Authority and Measuring Disparate Impact**

A. Introduction

Section VI discusses intentional discrimination or disparate treatment as one type of Title VI claim. Another type of Title VI violation is based on agency Title VI implementing regulations and is known as the disparate impact or discriminatory effects standard. While a discriminatory impact or effect may also be evidence of intentional discrimination or disparate treatment, this section discusses disparate impact as a cause of action independent of any intent.

The disparate impact regulations seek to ensure that programs accepting federal money are not administered in a way that perpetuates the repercussions of past discrimination. As the Supreme Court has explained, even benignly-motivated policies that appear neutral on their face may be traceable to the nation's long history of invidious race discrimination in employment, education, housing, and many other areas. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971); *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980); *Gaston Cty. v. United States*, 395 U.S. 285, 297 (1969). The disparate impact regulations ensure “that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.” H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963). The Supreme Court explained in *Griggs*, 401 U.S. at 429–30, that under Title VII, which was enacted at the same time as Title VI, “practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory employment practices.” *Id.* at 430; *see also Texas Dep’t of Hour. & Cmty. Affairs v. Inclusive Communities*, 135 S. Ct. 2507, 2521 (2015) (noting that “[r]ecognition of disparate impact claims is consistent with the [Fair Housing Act’s] central purpose” as it “was enacted to eradicate discriminatory practices within a sector of our Nation’s economy”) (citations omitted). The regulations task agencies to take a close look at neutral policies that disparately exclude minorities from benefits or services, or inflict a disproportionate share of harm on them.

A growing body of social psychological research has also reaffirmed the need for legal tools that address disparate impact. This research demonstrates that implicit bias against people of color remains a widespread problem.¹ Such bias can result in discrimination that federal agencies can prevent and address through enforcement of their disparate impact regulations. Because

¹ *See, e.g.,* Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. Personality & Soc. Psychol. 1464 (1998) (showing that majority of white experiment participants more frequently associate white faces rather than African American faces with “pleasant” factors); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 Cal. L. Rev. 945, 954–59 (2006); *see also* Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 Soc. Just. Res. 143 (2004); Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. Rev. 1241 (2002); Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489 (2005); Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 Cal. L. Rev. 969 (2006); Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 Cal. L. Rev. 1, 5–9 (2006).

individual motives may be difficult to prove directly, Congress has frequently permitted proof of only discriminatory impact as a means of overcoming discriminatory practices. The Supreme Court has, therefore, recognized that disparate impact liability under various civil rights laws, “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.” *Id.* at 2522.

In a disparate impact case, the investigation focuses on the consequences of the recipient’s practices, rather than the recipient’s intent. *Lau v. Nichols*, 414 U.S. 563, 568 (1974). As explained throughout this Section, “a plaintiff bringing a disparate-impact claim challenges practices that have a ‘disproportionately adverse effect on minorities’ and are otherwise unjustified by a legitimate rationale.” *Inclusive Communities*, 135 S. Ct. at 2513 (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)).²

Twenty-six federal funding agencies have Title VI regulations that include provisions addressing the disparate impact or discriminatory effects standard.³

AGENCY TITLE VI DISPARATE IMPACT REGULATIONS

A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration *which have the effect* of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

See, e.g., 28 C.F.R. § 42.104(b)(2) (emphasis added)(DOJ regulations).

² *Lau* was a Title VI case; as noted, *Inclusive Communities* involved the Fair Housing Act, 42 U.S.C. § 3601 et seq. Cases decided under Title VII or the Fair Housing Act may be instructive. Investigating agencies may find Fair Housing Act case law particularly instructive where the employment context does not present ready analogues. For instance, courts applying the Fair Housing Act frequently examine the impact borne in particular geographic areas, such as neighborhoods, towns, or counties, whereas Title VII cases more frequently involve comparisons between various groups of applicants and employees. Finally, investigating agencies might find helpful guidance from cases decided under an intent theory, but which evaluate statistical evidence of the disparate impact of a policy or practice, including Equal Protection Clause case law. Accordingly, this section will discuss disparate impact discrimination with reference to case law not only under Title VI, but also under these other laws.

³ *See* 7 C.F.R. § 15.3(b)(2)–(3) (USDA); 22 C.F.R. § 209.4(b)(2)–(3) (Agency for Int’l Dev.); 15 C.F.R. § 8.4(b)(2)–(3) (Dep’t of Commerce); 45 C.F.R. § 1203.4(b)(2) (Corp. for Nat’l &– Cmty. Serv.); 32 C.F.R. § 195.4(b)(2) (DOD); 34 C.F.R. § 100.3(b)(2)–(3) (Dep’t of Educ.); 10 C.F.R. § 1040.13(c)–(d) (Dep’t of Energy); 40 C.F.R. § 7.35(b)–(c) (EPA); 41 C.F.R. § 101–6.204–2(a)(2)–(3) (GSA); 45 C.F.R. § 80.3(b)(2)–(3) (HHS); 6 C.F.R. § 21.5(b)(2)–(3) (DHS); 24 C.F.R. § 1.4(b)(2)(i)–(3) (HUD); 43 C.F.R. § 17.3(b)(2)–(3) (Dep’t of the Interior); 28 C.F.R. § 42.104(b)(2)–(3)(DOJ); 29 C.F.R. § 31.3(b)(2)–(3) (DOL); 14 C.F.R. § 1250.103–2(b) (NASA); 45 C.F.R. § 1110.3(b)(2)–(3) (Nat’l Found. on the Arts &– Humanities); 45 C.F.R. § 611.3(b)(2)–(3) (NSF); 10 C.F.R. § 4.12(b)–(c) (NRC); 5 C.F.R. § 900.404(b)(2) (OPM); 22 C.F.R. § 141.3(b)(2) (Dep’t of State); 18 C.F.R. § 1302.4(b)(2)–(3) (TVA); 49 C.F.R. § 21.5(b)(2)–(3) (DOT); 31 C.F.R. § 22.4(b)(2) (Dep’t of Treasury); 38 C.F.R. § 18.3(b)(2)–(3) (VA); 18 C.F.R. § 705.4(b)(2) (Water Resources Council).

In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose *or effect* of excluding individuals from, denying them the benefits of, or otherwise subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose *or effect* of substantially impairing the accomplishment of the objectives of the Act or this subpart.

See, e.g., 28 C.F.R. § 42.104(b)(3) (emphasis added)(DOJ regulation).

The Supreme Court has repeatedly held that Title VI regulations validly prohibit practices having a discriminatory effect on protected groups, even if the actions or practices are not intentionally discriminatory. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 643 (1983) (Stevens, J., dissenting) (citing *Lau*, 414 U.S. at 568, 571 (Stewart, J., concurring) and *Fullilove v. Klutznick*, 448 U.S. 448, 479 (1980) (opinion of Burger, C.J.)); *Alexander v. Choate*, 469 U.S. 287, 293 (1985)). Funding agencies require that entities receiving federal financial assistance enter into standard agreements or provide assurances that the recipient will comply with the funding agency's implementing regulations under Title VI. *See, e.g.,* 28 C.F.R. § 42.105 (DOJ) (requiring applications for federal financial assistance to be accompanied by an assurance of compliance with Title VI implementing regulations); *see also United States v. Marion Cty Sch. Dist.*, 625 F.2d 607, 609, 612–13 (5th Cir. 1980) (confirming legitimacy of assurance requirement); *Guardians*, 463 U.S. at 642 n.13 (Stevens, J., dissenting) (quoting from HUD assurance).⁴

The basic analytical framework for applying the disparate impact standard has remained unchanged for decades; how to prove a violation of the disparate impact standard is discussed below.

B. *Sandoval* and the Critical Role of the Federal Funding Agencies

Federal funding agencies play a vital role in enforcing the prohibition on disparate impact discrimination through complaint investigations, compliance reviews, and guidance on how to comply with Title VI. In 1994, the Attorney General directed the “Heads of Departments and Agencies” to “ensure that the disparate impact provisions in your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.”⁵ The memorandum stated that agency enforcement “is an essential component of an effective civil

⁴ The Department of Justice issued its discriminatory effect regulation in 1966. 31 Fed Reg. 10,265 (July 29, 1966). Congress, fully aware of this administrative interpretation, has never altered it. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 620–21 (1983) (Marshall, J., dissenting) (noting, among other things, that Congress has enacted ten additional statutes modeled on Title VI “none of which define discrimination to require proof of intent” and that “Congress has not acted to correct any misinterpretation of its objectives despite its continuing concern with the subject matter”).

⁵ Memorandum from the Assistant Attorney General to heads of Departments and Agencies that Provide Federal Financial Assistance (Jul. 14, 1994), available at <http://www.justice.gov/ag/attorney-general-july-14-1994-memorandum-use-disparate-impact-standard-administrative-regulations>.

rights compliance program.... Frequently, discrimination results from policies and practices that are neutral on their face but have the *effect* of discriminating[.] Those policies and practices must be eliminated unless they are shown to be necessary to the program’s operation and there is no less discriminatory alternative.” *Id.* (emphasis added).

The agencies’ critical role only increased after the Supreme Court’s 2001 decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). Before *Sandoval*, it was believed that individuals could file civil actions relying on the Title VI disparate impact standard. In *Sandoval*, however, the Supreme Court held that *individuals* did not have a right of action to enforce the Title VI disparate impact regulations in federal court. *Id.* at 293. Following *Sandoval*, the Civil Rights Division issued a memorandum on October 26, 2001, for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors” that clarified and reaffirmed federal government enforcement of the disparate impact regulations. The memorandum explained that although *Sandoval* foreclosed private judicial enforcement of Title VI the regulations remained valid and funding agencies retained their authority and responsibility to enforce them.⁶ Nor does *Sandoval* affect the disparate impact provisions of other laws, such as Title VII or the Fair Housing Act. The agencies’ Title VI disparate impact regulations continue to be a vital administrative enforcement mechanism.

Complaint investigations and compliance reviews. In addition to the administrative complaint process, federal funding agencies are authorized to initiate affirmative compliance reviews as a mechanism for ensuring recipient compliance. Federal funding agencies should prioritize vigorous enforcement of their Title VI disparate impact provisions both through investigation of complaints and through compliance reviews.

Agency guidance. Funding agencies buttress their enforcement role by providing informal and formal guidance clarifying and applying their Title VI disparate impact regulations. The Supreme Court has stated that agencies have a great deal of discretion in establishing discriminatory impact standards: “Title VI had delegated to the agencies in the first instance the complex determination of what sorts of disparate impact upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.” *Choate*, 469 U.S. at 293–94; *see also Sandoval*, 532 U.S. at 306 (Stevens, J., dissenting). And lower courts have consistently recognized and deferred to agency interpretations of the disparate impact standard. *See, e.g., United States v. Maricopa Cty*, 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012) (citing *Auer v. Robbins*, 519 U.S. 452, 461 (1997)) (agency interpretation of its own regulations “controlling unless plainly erroneous or inconsistent with the regulations”); *S. Camden Citizens in Action v.*

⁶ Memorandum from the Assistant Attorney General to the Heads of Departmental Agencies, General Counsels, and Civil Rights Directors (Oct. 26, 2001) *available at* <http://www.justice.gov/crt/about/cor/lep/Oct26Memorandum.php>; *see Sandoval*, 532 U.S. at 281 (assuming for purposes of deciding the case “that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups”).

N.J. Dep't of Env'tl. Prot., 145 F. Supp. 2d 446, 496 (D.N.J. 2001) (reviewing Environmental Protection Agency regulations, guidance, and administrative decisions in analyzing claim brought under EPA's disparate impact provision); *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J.), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001).

C. Proving a Violation of the Disparate Impact Standard

Understanding the process for establishing Title VI noncompliance in disparate impact cases is crucial in assessing an allegation or matter and determining how an agency conducts its investigation. Courts have developed analytical frameworks to assess disparate impact claims in litigation that inform agencies' investigative processes. In some instances, agencies have issued guidance documents articulating a process for determining compliance in particular types of disparate impact cases.

The elements of a Title VI disparate impact claim are similar to the analysis of cases decided under Title VII. *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995).⁷ Cases decided under the Fair Housing Act, 42 U.S.C. § 3601 et seq., also often employ disparate impact analyses, and HUD's Fair Housing Act implementing regulations, 24 C.F.R. § 100.500, adopt a formulation of the disparate impact standard that is substantially similar to the Title VI and Title VII standard.

Courts have adopted a three-part test to determine whether a recipient's policy or practice violates the Title VI disparate impact regulations. First, does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? Some courts refer to this first inquiry as the "prima facie" showing. If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? *N.Y. Urban League*, 71 F.3d at 1036. A violation is still established if the record shows the justification offered by the recipient was pretextual. *See Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993) (citing *Georgia State Conf. v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)). Finally, is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? If such an alternative is available to the recipient, even if the recipient establishes a justification, the policy or practice will still violate disparate impact regulations.

⁷ The test has been codified in Title VII at 42 U.S.C. § 2000e-2(k).

TITLE VI DISPARATE IMPACT VIOLATION

- 1) **Disparate impact.** Does the adverse effect of the policy or practice fall disproportionately on a race, color, or national origin group? See Section C.1.
- 2) **Justification.** If so, does the record establish a substantial legitimate justification for the policy or practice? See Section C.2.
- 3) **Less discriminatory alternative.** Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? See Section C.3.

In administrative investigations, this court-developed burden shifting framework serves as a useful paradigm for organizing the evidence. Agency investigations, however, often follow a non-adversarial model in which the agency collects all relevant evidence then determines whether the evidence establishes discrimination. Under this model, agencies often do not shift the burdens between complainant and recipient when making findings. For agencies using this method, the following sections serve as a resource for conducting an investigation and developing an administrative enforcement action where appropriate.

AGENCY PRACTICE TIP

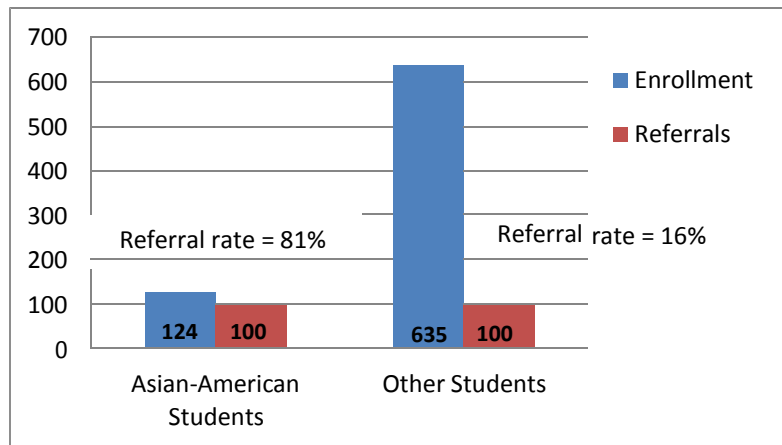
Agencies need not address each element in rank order because lack of evidence of any one of these elements results in a “no violation” finding and concludes the analysis. However, in many cases understanding the nature of the harm is an important first step to evaluating its impact on a protected class. The sections below provide additional insight into the potential benefits of proceeding in a particular order through the investigation and analysis.

The example below, adapted from Department of Education guidance, illustrates how the three-part test would inform an administrative investigation of a Title VI complaint alleging that a school discipline policy violates the disparate impact regulation.⁸

⁸ Dep’t of Educ., Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

ILLUSTRATION: DISPARATE IMPACT INVESTIGATION OF SCHOOL DISCIPLINE POLICY

A middle school has a “zero tolerance” tardiness policy. Students who are more than five minutes tardy to class are always referred to the principal’s office at a particular school, where they are required to remain for the rest of the class period regardless of their reason for being tardy. The school also imposes an automatic one-day suspension when a student is recorded as being tardy five times in the same semester. Additional tardiness results in longer suspensions and a meeting with a truancy officer. The evidence shows Asian-American students are **disproportionately** losing instruction time under the school’s “zero tolerance” tardiness policy, as a result of both office referrals and suspensions for repeated tardiness.



An investigation further reveals that white and Hispanic students are more likely to live within walking distance of the school, while Asian-American students are more likely to live farther away and in an area cut off by an interstate highway that prevents them from walking to school. The majority of Asian-American students are thus required to take public transportation. These students take the first public bus traveling in the direction of their school every morning. Even though they arrive at the bus stop in time to take the first bus available in the morning, they often are not dropped off at school until after school has begun.

As **justification** for the “zero tolerance” tardiness policy, the school articulates the goals of reducing disruption caused by tardiness, encouraging good attendance, and promoting a climate where school rules are respected, all of which the federal funding agency accepts as important educational goals. The agency would then assess the fit between the stated goals and the means employed by the school—including whether the policy is reasonably likely to reduce tardiness for these students under these circumstances.

Assuming there was such a fit, the agency would then probe further to determine the availability of **alternatives** that would also achieve the important educational goals while reducing the adverse effect on Asian-American students (e.g., aligning class schedules and bus schedules, or excusing students whose tardiness is the result of bus delays). If the agency determines that a school’s articulated goal can be met through alternative policies that eliminate or have less of an adverse racial impact, the agency would find the school in **violation** of Title VI and require that the school implement those alternatives.

1. Establishing an Adverse Disparate Impact

The first step in analyzing any disparate impact case is determining whether the recipient's criteria or method of administering its programs or activities *adversely* and *disparately* affect members of a protected class. In some cases federal agencies proceed directly to preliminary findings after this step. To establish an adverse disparate impact, the investigating agency must (1) identify the specific policy or practice at issue; (2) establish adversity/harm; (3) establish significant disparity;¹ and (4) establish causation. See *N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must “allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.”).

ELEMENTS TO ESTABLISH ADVERSE DISPARATE IMPACT UNDER TITLE VI

- 1) Identify the specific **policy or practice** at issue; see Section C.3.a.
- 2) Establish **adversity/harm**; see Section C.3.b.
- 3) Establish **disparity**; see Section C.3.c.
- 4) Establish **causation**; see Section C.3.d.

a. Identifying the facially neutral policy or practice

Accurate disparate impact analyses begin with identifying the policy or practice that allegedly caused the disparate harm. *Inclusive Communities*, 135 S. Ct. at 2523 (“a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity”). Although plaintiffs’ claims succeed or fail based on whether they have established adversity/harm, significant disparity, and causation, identifying the policy at issue informs the evaluation of the evidence put forth at these three stages.

When analyzing disparate impact claims, investigating agencies must accurately and completely define the policy or practice at issue. In some cases, the agency will have to broaden its inquiry beyond the specific complaint allegations in order to conduct this analysis. Courts, however, provide little guidance to agencies in how to separate discrete parts of a recipient’s evaluation process. Identifying the relevant parts of any policy or practice is a fact-specific inquiry.

AGENCY PRACTICE TIP

While an investigating agency must initially identify the full policy or practice at issue, this does not mean the agency must investigate every application of that practice. For example, in statewide or large-scale investigations, agencies may develop evidentiary sampling methods probative of the merits of such complaints. Sampling methods are discussed further in the disparity section below.

¹ If statistics are used to establish disparity, they must establish statistically significant disparity, as discussed below in section C.3.c.

One method to discern whether the legally relevant policy or practice is broader than the action identified by the complainant involves identifying the negative effect that the challenged action has on the protected group. For example, in *New York City Environmental Justice Alliance*, the court rejected a challenge to New York City's decision to scale back a community garden program benefitting minority neighborhoods. Although the precise action challenged was the City's closing or selling of community gardens, the plaintiffs identified the negative effect of the action as the reduction of the amount of open space/green space available to minority community districts. 214 F.3d at 71. The court saw the issue as the City's overall policy about green spaces, not its decision to sell or close community gardens. So viewed, the City would not violate Title VI unless the overall open space/green space policy disadvantaged predominantly minority neighborhoods significantly more than predominantly white neighborhoods. The plaintiffs' statistics only included calculations that compared available space from community gardens, parks, and playgrounds, and excluded space from regional parks available to the community districts. *Id.*

The court noted that this exclusion meant that they could not actually evaluate the City's overall green space policy: "[T]he plaintiffs fail to explain how 'open space' statistics excluding regional parks adjacent to minority communities—some of the most important open spaces in the City—are meaningful in determining whether, as they assert, there is a disparate impact in minority communities as a whole resulting from the City's sale of garden lots." *Id.* at 71 n.5.

Similarly, in *Greater New Orleans Fair Housing Action Center v. HUD*, 639 F.3d 1078 (D.C. Cir. 2011), the court rejected a challenge to one part of HUD's formula for awarding hurricane relief grants. The plaintiffs alleged that under HUD's formula, African Americans had less access to rebuilding programs after hurricanes Katrina and Rita. *Id.* at 1079. The court held that while that one part of the formula, viewed in isolation from the rest, may have had an adverse impact on African Americans, other parts of the formula may have disproportionately benefitted African Americans. *Id.* at 1086. Thus, the court looked at the Katrina/Rita grant process as a whole. *Id.* The court also rejected plaintiffs' evidence that was limited to a single parish because HUD applied the formula in a much broader geographic area. *Id.*

The *Greater New Orleans* court's focus on the geographic area where the impact occurred provides a related method to ascertain the policy or practice. Specifically, agencies should identify the area where the negative effects occur even if that area is larger than the area that is the focus of the complainant's allegation. For example, in *Coalition of Bedford-Stuyvesant Block Ass'n v. Cuomo*, 651 F. Supp. 1202, 1206 (E.D.N.Y. 1987), the plaintiffs claimed the City of New York located shelters for homeless persons in a manner that had the effect of concentrating all but one of the City-owned homeless shelters in Brooklyn's minority communities in violation of, inter alia, the Fourteenth Amendment. The court, however, considered all of the sites City-wide, and not in Brooklyn, because the relevant policy and practice was the City's siting of shelters generally, not just in one portion of its jurisdiction. *Id.* at 1209. The court rejected plaintiff's data because it only covered the impact in Brooklyn. *Id.*

AGENCY PRACTICE TIP

Agencies should inquire about the challenged action's negative effect—looking at who is impacted and where the impact occurs—in order to identify the legally relevant policy or practice. Agencies should remember that the answer to this question may also come from the disparity/discriminatory effect analysis discussed below.

The importance of avoiding examination of only a portion of the legally relevant policy or practice does not mean that an agency must always examine the entirety of what a recipient does. Where plaintiffs allege discrimination in access or opportunities instead of in outcomes, a policy or portion of that policy can have a discriminatory effect on a protected class even where another policy or portion of that policy has a countervailing effect. As the Supreme Court has stated in the employment context, because a certain group ultimately gets hired or promoted at the same rate as another overall does not preclude claims that some aspect of the hiring or promotion process has a disparate impact on them. *See Connecticut v. Teal*, 457 U.S. 440, 451–52 (1982); *accord Clady v. Cty. of Los Angeles*, 770 F.2d 1421, 1429 (9th Cir. 1985). The *Teal* Court made clear that Title VII ensures equal *opportunities* for individuals, not just equal *outcomes* for groups. 457 U.S. at 451. In *Teal*, the defendant imposed a written examination for promotion candidates that excluded a much greater number of African Americans. It then employed affirmative action with respect to those who did pass to ensure that it promoted a proportionate number of African American candidates. *See id.* at 443–44. The Court held that those whom the test excluded from consideration were entitled to challenge the discriminatory procedure under Title VII, notwithstanding the absence of racial disparity in the “bottom-line,” i.e., the final award of promotions. *Id.* at 451, 456.

The *Teal* holding has been applied in Fair Housing Act cases relating to access to nondiscriminatory housing, *Betsey v. Turtle Creek Assoc.*, 736 F.2d 983, 987 (4th Cir. 1984) (“‘Bottom-line’ considerations of the number and percentage of minorities in the rest of the complex or community are ‘of little comfort’ to those minority families evicted from Building Three”), and Title VI disparate impact cases relating to access to schools or school programs. *See, e.g., Cureton v. NCAA*, 37 F. Supp. 2d 687, 704–05 (E.D. Pa. 1999) (rejecting NCAA’s “bottom-line” defense that pointed to graduation rates in disparate impact case involving initial eligibility standards), *rev’d on other grounds*, 198 F.3d 107 (3d Cir. 1999); *Elston*, 997 F.2d at 1418–20 (finding the increase in the racial identifiability of black-majority school as a result of school transfer practices sufficient to constitute a disparate impact, even if overall racial balances had not changed in either the county or county school system, because the success of desegregation is measured on a school-by-school basis).

Finally, the importance of identifying a specific practice does not necessarily mean that practice must be affirmatively undertaken; sometimes the relevant policy or practice could be the failure to do something, or even the failure to have a policy. In other words, *inaction* can exert a disproportionate adverse effect. Language access cases provide an example. The failure to have a coherent language assistance policy, or to train employees on providing assistance, can prevent individuals who are limited English proficient from benefiting from the recipient's program. Where a recipient does not implement any language assistance policy but instead leaves these individual employees untrained and uninformed to do what they will, the result may be that these employees will often fail to provide appropriate assistance. *See, e.g., Maricopa Cty.*, 915 F. Supp. 2d at 1079 (disparate impact violation based on national origin properly alleged where recipient "failed to develop and implement policies and practices to ensure [limited English proficient] Latino inmates have equal access to jail services" and discriminatory conduct of detention officers was facilitated by "broad, unfettered discretion and lack of training and oversight" resulting in denial of access to important services). Similarly, where law enforcement agencies fail to train their officers, a failure to properly assist persons who are limited English proficient often follows. *See, e.g., U.S. v. Town of E. Haven*, No. 3:12-cv-1652, 2012 WL 5869974, ¶ 43 (D. Conn. filed Nov. 20, 2012).

b. Establishing adversity/harm

Once the investigating agency has accurately identified the policy or practice, it must evaluate whether the policy or practice "harms" a particular group of people enough to be actionable. This element is sometimes referred to as "adversity of the impact."⁹ The investigating agency must determine whether the alleged consequences are sufficiently adverse or harmful. *See Bryan v. Koch*, 627 F.2d 612, 617 (2d Cir. 1980). Adversity exists if a fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm. This discussion will use the terms "adversity" and "harm" interchangeably.

Most cases applying the Title VI disparate impact standard do not explicitly address adversity as a separate element. Rather, courts frequently assume that the impacts alleged were sufficiently adverse, impliedly recognizing a wide range of harms, including physical, economic, social, cultural, and psychological. In many administrative investigations, particularly those involving the denial of services or benefits, investigating agencies, too, will be able easily to conclude the harm alleged is legally sufficient.

The expansive language of Title VI and its implementing regulations support this approach: the statute states that no person shall on the ground of race, color, or national origin "be excluded

⁹ *E.g., S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446, 487 *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J.) (discussing the methods used to "evaluate the 'adversity' of the impact" and considering whether the impacts at issue were "sufficiently adverse" to establish a *prima facie* case), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001).

from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. In implementing this provision, agency regulations further state that recipients may not administer their programs or activities in a manner which “den[ies] any individual *any disposition, service, financial aid, or benefit* provided under the program.” 28 C.F.R. § 42.104(b)(1)(i) (DOJ) (emphasis added), or “restrict[s] an individual *in any way* in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program,” *Id.* § 42.104(b)(1)(iv) (emphasis added). Agency disparate impact regulations do not define discriminatory “effects” but simply state that recipients may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin” *Id.* § 42.104(b)(2).¹⁰

AGENCY PRACTICE TIP

While establishing adversity in most cases presents a low bar, investigating agencies nevertheless should employ a broad definition of adversity/harm, and gather any and all evidence of adversity/harm or risk of adversity/harm, including anecdotal evidence from complaining witnesses. Even though such additional evidence may not be required as a legal matter, it provides important context for the decision-maker. Such evidence also informs development of the appropriate remedy in the case of noncompliance.

Fewer or inferior services or benefits. Courts have frequently identified Title VI adversity/harm where recipients’ policies or practices result in fewer services or benefits, or inferior service or benefits. In this type of case, the recipient denies the plaintiff something deemed desirable. For example, in *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1986), the court held that improper placement in special education classes had a “definite adverse effect” because such “classes are dead-end classes which de-emphasize academic skills and stigmatize children improperly placed in them.” *Id.* at 983; *see also Elston*, 997 F.2d at 1412 (holding that stigmatization of black children and the risk of closure of a school in a black community, among other things, “might well constitute a disparate impact”). While these cases often arise in the education context, many different types of inferior services and benefits will satisfy the adversity requirement. *See, e.g., Meek v. Martinez*, 724 F. Supp. 888, 906 (S.D. Fla. 1987) (minority seniors harmed when receiving less financial aid for community services than non-minority peers); *Campaign for Fiscal Equity, Inc. v. New York*, 86 N.Y.2d 307, 323–24, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (adversity properly alleged where minority students received less state financial aid as a group and per pupil than their nonminority peers); *Sandoval v. Hagan*, 197 F.3d 484, 508 (11th Cir. 1999) (lack of drivers’ licenses adversely affects individuals in the form of lost economic opportunities, social services, and other quality of life pursuits), *rev’d on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001); *Maricopa Cty.*, 915 F. Supp. 2d at 1081 (adversity properly alleged where limited English proficient Latino inmates had

¹⁰ The DOJ regulations quoted here are similar to those of other agencies.

diminished access to jail services such as sanitary needs, food, clothing, legal information, and religious services).

Distribution of burdens, negative effects. Recipient practices also can harm protected class members even without the loss of specific services or benefits. In this type of case, the recipient distributes burdens, or something seen as undesirable. For example, in *Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 127 (S.D. Ohio 1984), the court held that disruptions and other impacts of planned highway construction would negatively affect minority residents living in the area under construction. In another case, a court found that plaintiffs established sufficient potential harm to their health resulting from the recipient's issuance of air pollution permits for a cement processing facility, noting that the operation of the facility would "adversely affect [the plaintiffs'] health to a degree that meets the standard of 'adversity' under Title VI." *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446, 490, *opinion modified and supplemented*, (D.N.J.), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001). The court granted a preliminary injunction and the air permits were vacated. *Id.* at 505; *see also Darensburg v. Metro. Transp. Comm.*, 636 F.3d 511, 520–22 (9th Cir. 2011), (finding that while plaintiffs had not established a prima facie case, a transit expansion plan could result in disproportionate harm to minorities); *Maricopa Cty.*, 915 F. Supp. 2d at 1079 (plaintiff properly stated a disparate impact claim where Latinos, as compared with non-Latinos, were far more likely to be stopped by officers).

Threatened or imminent harm. These cases and others also illustrate that threatened or imminent harm may satisfy the adversity requirement.¹¹ *See, e.g., NAACP v. Med. Ctr., Inc.*, 657 F.2d 1322, 1332–38 (3d Cir. 1981) (en banc) (examining a disparate impact claim under Title VI concerning the future impact of a planned medical center relocation); *Damian*, 608 F. Supp. at 127 (examining a disparate impact claim brought under Title VI concerning the future impact of a planned highway expansion). Notably, the Environmental Protection Agency has determined that based on a technical analysis, a showing of *potential* health effects, depending on their nature and severity (e.g., cancer risk), provides an adequate basis for a finding of adversity under EPA's disparate impact regulation. EPA Investigative Report, *For Title VI Admin. Complaint File No. 16R-99-R9*, at 26–28 (Aug. 25, 2011);¹² EPA Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650, 39,679–81 (June 27, 2000).

Mix of costs and benefits, effects that are difficult to quantify. In some cases, recipient actions provide a mix of costs and benefits, or the alleged harm may be difficult to quantify.

¹¹ Of course, the challenged policy must be ripe for review by the investigating agency. Where the recipient has not yet adopted the policy because, for instance, several potential options are under consideration, it may be premature to analyze a challenge to that potential policy.

¹² EPA Investigative Report for Title VI Admin. Complaint File No. 16R-99-R9 (Aug. 25, 2011), *available at* <http://www.epa.gov/ocr/TitleVICases/ir-082511.pdf>.

These factors may increase the complexity of the adversity/harm analysis. For example, hospital relocations and closures are often challenged on the grounds that they will force residents of predominantly minority neighborhoods to travel greater distances for service, without an attempt to demonstrate that this would cause a hardship or that the quality of service and care would be diminished. In *Bryan*, 627 F.2d at 617, the court addressed a challenge to the closure of a hospital that served a 98% minority population, compared with a 66% minority population in the surrounding city's hospital system. Based on these statistics, the court easily found the closure would affect the minority population disproportionately (this step of the analysis—disparity—is discussed in C.1.c. below). Less easy was “whether the impact of this disparity is sufficiently adverse to create a prima facie Title VI violation” *Id.* The court pointed out that the great majority of patients would be provided satisfactory care in nearby municipal and voluntary hospitals, and only a small number of emergency room patients “would suffer adverse consequences if the nearest emergency room treatment available were at even slightly more distant locations.” *Id.* Ultimately, the court proceeded with the subsequent steps of the impact analysis instead of stopping the analysis based on the weakness of the adversity/harm evidence.

Similarly, in a school closing case, the plaintiffs alleged that the closure and student transfers resulted in a discriminatory effect on Hispanic students by depriving them of the high quality education previously provided. The court found there was no adversity/harm, and thus declined to analyze disparity, because (1) the new schools had comparable facilities, (2) there was no evidence that the new schools would be overcrowded, (3) special education programs would continue at the new schools, and (4) the new schools had similarly high percentages of at-risk and minority students. *Villanueva v. Carere*, 85 F.3d 481, 487 (10th Cir. 1996).¹³

Determining the sufficiency of harm can be a fact-intensive and complicated inquiry, particularly where recipient actions provide both costs and benefits, or where the alleged harm can be difficult to quantify. In *NAACP v. Medical Center*, the court noted that it was a close call whether impacts were sufficiently adverse/harmful. Here, the court questioned (without deciding) the plaintiffs' contention that a hospital's relocation from the inner city to an outlying suburban location caused sufficient harm absent proof that the need to travel a few extra miles inflicted significant harm on patients. At trial, the district court considered whether relocation would result in a slight increase in travel time, a modest decrease in the ability of inner city residents to visit patients at the new suburban site, the possibility that a few high risk patients might miss appointments, and the rare chance that treatment would be inadequate. It then determined these to be such unlikely effects that they failed to establish a prima facie case, particularly when weighed against the numerous benefits of the relocation. *NAACP v. Wilmington Med. Ctr.*, 491 F. Supp. 290, 337 (D. Del. 1980). Although the Third Circuit

¹³ The factors listed in *Villanueva* are not intended to be exclusive. There are multiple other potentially relevant factors that affect whether a school closing may violate Title VI. Some of the relevant factors, for example, are noted in the Department of Education's “Dear Colleague” letter on resource comparability. See <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

affirmed without deciding this particular issue, a concurrence addressed the issue directly, finding the countervailing benefits accruing to minority patients a determinative consideration:

[T]hese specific findings are part of a larger mosaic: the trial court’s overarching finding that the level of care for all population groups will improve as a result of the benefits that greater consolidation, better-trained residents and upgraded facilities will confer. Measured against [agency] regulations which define Title VI violations as actions which have “the effect of *defeating or substantially impairing* accomplishment of the objective of the program as respect (sic) individuals of a particular race, color, or national origin,” 45 C.F.R. § 80.3(b)(2) (emphasis added), these de minimis impacts simply do not pass muster.

Med. Ctr., 657 F.2d at 1340 (Adams, J., concurring); *see also United States v. Bexar Cty.*, 484 F. Supp. 855, 859 (W.D. Tex. 1980) (finding the increased quality of care at a new medical center “much more than offset and outweigh” possible transportation problems created by relocation).

In both *Medical Center* and *Bexar*, the recipients had taken actions to mitigate the impacts on minorities, and both holdings recognized these efforts as important considerations. In *Medical Center*, the recipient had entered into an agreement with the Department of Health, Education & Welfare (predecessor to the Department of Health and Human Services), obligating it to “designate an ombudsman to receive and act upon complaints of discrimination, to adopt a system of inpatient utilization control, to prevent either [of the two hospitals in the parent system] from becoming racially identifiable,” and to set aside nearly three million dollars for the renovation of the existing facility. *Med. Ctr.*, 657 F.2d at 1331–32. In *Bexar*, the hospital understood the new travel burden and had taken steps to alleviate problems by providing mini-bus service. *Bexar*, 484 F. Supp. at 860. It is possible that the court may have ruled differently but for these ameliorative measures.

AGENCY PRACTICE TIP

Investigating agencies should consider the sufficiency of the adversity/harm and carefully consider whether benefits to the affected group offset or outweigh the harms to that group. Agencies should remember that recipients may be able to ensure compliance with Title VI by mitigating any adverse harm that may affect the protected group. Informal resolution efforts often involve identification of mitigation efforts which, if applied, would result in compliance with Title VI by reducing or eliminating adversity/harm.

c. Establishing disparity

An investigating agency’s disparity analysis must answer the question that is the essence of a violation of agency disparate impact regulations: Is a disproportionate *share* of the adversity/harm borne based on race, color, or national origin? If so, a disparity is established.

To establish a disparity, an investigating agency must use an “appropriate measure.” *N.Y.C. Envtl. Justice All.*, 214 F.3d at 70 (citation omitted). A typical disparity measure involves a comparison between the proportion of persons in the protected class who are adversely affected by the challenged practice and the proportion of persons not in the protected class who are adversely affected. *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 576–77 (2d Cir. 2003). A disparity is established if the challenged practice adversely affects a significantly higher proportion of protected class members than non-protected class members. *Id.*

AGENCY PRACTICE TIP

There is no one-size-fits-all measure for disparity. Investigating agencies must tailor their methodology to the circumstances in each case in order to ensure an accurate measurement. For example, under the Fair Housing Act, HUD noted that deciding whether “a particular practice results in a discriminatory effect is a fact-specific inquiry” and that because there are “numerous and varied practices and wide variety of private and governmental entities covered by the Act, it would be impossible to specify in the rule the showing that would be required to demonstrate a discriminatory effect in each of these contexts.” Implementation of the Fair Housing Act’s Disparate Impact Standard, 78 Fed. Reg. 11,460, 11,468, (Feb. 15, 2013). Where recurring case types have sufficient commonalities, however, agencies can consider crafting guidelines for measuring and defining adverse disparate impact in their recipients’ programs. Where such guidelines apply, the investigating agency should, of course, use the methodologies developed for specific matters.

When beginning a disparity analysis, an investigating agency should take two initial steps. First, the agency should identify the protected class. Second, the agency must evaluate whether statistical evidence is available and necessary to evaluate the claim. Next, the agency takes the third and fourth steps, which are the most critical components of the disparity analysis. In the third step, the agency should evaluate on what population the adverse disparate impact must be shown. This highly fact-specific inquiry involves accurately identifying the adversely affected population as well as determining the legally relevant population base from which to draw a comparison population. Finally, the agency must determine whether the disparity shown is sufficiently large to impose legal liability (sometimes termed “practical significance”).

i. Identifying the Protected Class

Typically, the relevant protected class will be evident from the complaint because it alleges harm to a specific group (e.g., “Latinos” or “Blacks”). Other times, however, the complaint may broadly allege harm to “minorities” or to several specific groups collectively, or funding agencies may wish to conduct compliance reviews addressing impacts on such groups in the aggregate. Agencies may conduct disparity analyses in which multiple protected groups are aggregated. Such aggregation is commonplace and presumptively accepted by the courts. *See, e.g., Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 650–55 (1989) (conducting a close critique of the statistics used to compare “white” and “nonwhite” workers and indicating that to

prove disparate impact, one must provide statistics of probative value comparing “white” and “nonwhite” individuals under Title VII); *Darensburg*, 636 F.3d at 520–21 (critiquing the district court’s statistical methodology comparing effects on “minorities” and “non-minorities” generally under Title VI while raising no complaint with the aggregate statistics used). Many cases accept statistics aggregating “Blacks” and “Hispanics.” E.g., *N.Y.C. Transit Auth. v. Beazer*, 440 U.S. 568, 584–85 (1979); *Biondo v. City of Chicago*, 382 F.3d 680, 682–83 (7th Cir. 2004); *Cox v. City of Chicago*, 868 F.2d 217, 220 (7th Cir. 1989); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 929 (2d Cir. 1988), *aff’d in part*, 488 U.S. 15 (1988).

On the other hand, agencies should avoid aggregation where two groups are not similarly situated and aggregation may hide disproportionate effects on one of the groups. *See Rich v. Martin Marietta Corp.*, 522 F.2d 333, 346 (10th Cir. 1975) (aggregating group statistics as between “blacks, women and Chicanos and [Asians] and American Indians” was inappropriate because the practice “rendered the statistics useless, particularly in view of the fact that the [Asians] especially were heavily represented in the upper echelon of the labor force”).

AGENCY PRACTICE TIP

If the recipient’s policy or practice exerts an adverse/harmful effect on more than one protected group, agencies may aggregate protected groups unless the groups are not similarly situated.

ii. Determining the Need for Statistical Evidence

Often a disparity can be quantified using statistical evidence. *See Darensburg*, 636 F.3d at 519 (explaining that appropriate statistical evidence can provide a “reliable indicator of a disparate impact” (citing *New York Urban League*, 71 F.3d at 1038)). And the majority of contemporary disparate impact claims involve comparative evidence based on statistical analysis. It is important to remember, however, that even where statistical evidence is available, circumstantial evidence can be a critical supplement. As the Supreme Court has cautioned, the usefulness of statistics “depends on all of the surrounding facts and circumstances.” *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 340 (1977).

While statistical evidence is often necessary, in some cases statistical evidence may not be needed. *Thomas v. Washington Cty. Sch. Bd.*, 915 F.2d 922, 926 (4th Cir. 1990) (“although disparate impact cases usually focus on statistics, they are neither the exclusive nor a necessary means of proof”) (citation omitted). The requisite unfair share of harm can also be shown by evidence of impact on specific individuals. *See, e.g., McCoy v. Canterbury*, No. 3:10–0368, 2010 WL 5343298, at *5 (S.D.W. Va. Dec. 20, 2010) (a “series of discrete episodes” of the challenged practice can “raise a plausible inference that it has a discriminatory impact on minorities”), *aff’d*, 428 Fed. App’x 247 (4th Cir. 2011); *Mitchell v. Bd. of Trustees*, 599 F.2d 582, 585–86 (4th Cir.

1979) (affirming district court’s finding of disparate impact “on the basis of the few specific applications of the policy proven, such inferences of likely other applications as these instances could rationally support, and judicial notice of the world as it is and as it is known in common experience to be”).

The disparate effect of a recipient’s policy or practice is sometimes so obvious or predictable that comparative statistics are simply unnecessary to draw the requisite connection between the policy and harm to a Title VI protected group. For instance, certain recipient language policies have the self-apparent effect of excluding individuals based on their national origin. *See Lau v. Nichols*, 414 U.S. 563, 568 (1974) (finding national origin discrimination without reliance on statistical evidence because instruction takes place only in English and therefore “[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority”); *see also Mitchell*, 599 F.2d at 585–86 (upholding district court finding that “a policy that arguably would not renew the contract of any teacher who for any reason could not commit at contract renewal time to a full year’s uninterrupted service, but that singled out pregnancy alone for compelled disclosure, would necessarily impact disproportionately upon women”).

AGENCY PRACTICE TIP

Agencies should not immediately dismiss a claim if statistics are not provided or available. Instead, agencies should ask if the requisite unfair share of harm can also be shown by evidence of impact on specific individuals or if the discriminatory effect of a recipient’s policy or practice is inherently obvious or predictable.

iii. Relevant comparator population

If an agency uses statistical evidence, it must determine the particular proportion of protected persons and non-protected persons adversely affected. To do this, the agency must “take into account the correct population base and its racial makeup.” *Darensburg*, 636 F.3d at 520. This step in a statistical analysis of disparate impact, therefore, is to identify the base population from which to draw comparative evidence, because the challenged policy must be shown to have a discriminatory effect *within the population or area it affects*. *See, e.g., Hallmark Developers, Inc. v. Fulton Cty.*, 466 F.3d 1276, 1286 (11th Cir. 2006). In other words, the legally relevant “population base” for a statistical measure of adverse disparate impact is all persons the policy or practice affects or who could possibly be affected by some change in (or the elimination of) the policy or practice. Normally, this means “persons subject to the challenged ... practice.” *Carpenter v. Boeing Co.*, 456 F.3d 1183, 1196 (10th Cir. 2006). As stated in a Fair Housing Act case, *Housing Investors, Inc. v. City of Clanton*, 68 F. Supp. 2d 1287, 1299 (M.D. Ala. 1999), “the starting point is always the subset of the population that is affected by the disputed decision.”

As these cases show, because the ultimate question is whether the policy has a discriminatory effect within the population it affects, statistical evidence ideally should be based on comparison groups that include, but do not extend beyond, “the total group to which the policy was applied.” *Betsey v. Turtle Creek Assoc.*, 736 F.2d 983, 987 (4th Cir. 1984). Part (a) of this section, below, discusses comparison groups that include the total group to which the policy applies.

Of course, the ideal evidence, i.e., statistical proof that covers the relevant population, is not always available. Investigating agencies may find that additional issues arise in attempting to analyze disparate impact within the affected population or area using statistical evidence that is not always a perfect fit. As discussed in part (b), sometimes the sources of available data may describe only a population smaller or larger than the population actually subject to the challenged policy. Other times, comparison groups are simply unavailable because the disparate effects of the policy or practice cannot be isolated or the policy or practice has a uniform, or near uniform, adverse effect on a predominantly minority population or area. Section (b) provides some additional guidance on methods that may be available to address these complications.

(a) Comparator groups that include the total group to which the policy was applied

Determining the population to which the challenged policy is applied or area the policy actually affected can present a challenging, fact-intensive element of proof. In certain types of cases involving whole areas, like cities, counties, or states, the investigating agency may use general population data where everyone in that population may be affected. Investigating agencies may find this method more efficient than other options because general population data are often readily available at little or no cost through existing sources. For example, in *Angelita C. v. California Department of Pesticides Regulation*, No. 16R-99-R9, an EPA administrative case, complainants alleged that the use of a particular pesticide caused adverse health risks borne disproportionately by Latino school children. EPA correctly measured disparity within the population base of all students enrolled in California public schools because all school children “could potentially have been affected” by the use of that pesticide, depending on proximity of the school to the farm using the pesticide and meteorological conditions. EPA Office of Civil Rights, *Investigative Report for Title VI Admin. Complaint File No. 16R-99-R9* at 32 (Aug. 25, 2011).¹⁴

Similarly, in a Fair Housing Act (FHA) disparate impact claim that challenged the effect of a generally applicable zoning ordinance or other local law, the court determined that the legally relevant population base was everyone who lived in the city where the allegedly discriminatory fire code applied. *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 577 (2d Cir. 2003) (fire code used to bar group home for recovering alcoholics and drug addicts violated FHA and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12165).

¹⁴ The report is available here: <http://www.epa.gov/civilrights/TitleVICases/ir-082511.pdf>.

By contrast, in an FHA disparate impact claim that challenge a more focused policy or practice, the court rejected an attempt to use generalized population data. *Betsey*, 736 F.2d at 987–88. In *Betsey*, plaintiffs challenged an apartment complex’s institution of a no-children policy in one of its buildings, resulting in the evictions of many African-American residents. *Id.* at 985–86. The court held that the only relevant question was the policy’s effect on African-American tenants of that building; it was irrelevant that the policy had little disparate impact on African-American residents community-wide, because the policy did not apply so broadly. *Id.* at 987–88. Because the percentage of minority residents receiving eviction notices was far higher than that of non-minority residents receiving eviction notices, a showing of disparate impact was “self-evident.” *Id.* at 988.

The history of Title VII disparate impact claims also suggests that agencies must be very cautious in the use of jurisdiction-wide population statistics. While courts sometimes allowed plaintiffs in early cases to use the population of the surrounding area as the population base for determining whether an employer’s hiring practices had an adverse disparate impact on a protected class, *see, e.g., Griggs*, 401 U.S. at 430, it is now clear that the legally relevant population base is the actual applicant pool or qualified applicant pool. *See, e.g., Paige v. California*, 291 F.3d 1141, 1145 (9th Cir. 2002) (“In evaluating the impact of a particular process, we must compare the group that ‘enters’ the process with the group that emerges from it.”); *Stout v. Potter*, 276 F.3d 1118, 1123 (9th Cir. 2002) (“Generally, the appropriate population is the applicant pool or relevant labor market from which the positions at issue are filled.”) (citing *Wards Cove Packing Co.*, 490 U.S. at 650–51); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 308 (1977)).

Although Title VI matters are less frequently the subject of litigation than housing or employment cases, the test for determining the relevant population base from which to measure disparity in a Title VI case is the same. In *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984), for example, plaintiffs claimed that California used an IQ test to place children in non-academic track classes, resulting in an adverse impact on black children. The relevant population base was all school children who took the test. The court concluded that plaintiffs made out a prima facie case by showing that “black children as a whole scored ten points lower than white children on the tests, and that the percentage of black children in [non-academic-track] classes was much higher than for whites.” *Id.* at 982–83. Similarly, in *Bryan v. Koch*, 627 F.2d 612, 617 (2d Cir. 1980), where plaintiffs alleged that closing a city hospital serving a 98% minority population violated Title VI, the court determined that the relevant population base was “the patients served by the City’s municipal hospital system.” *Id.* Because the general population was 66% minority—significantly less than the 98% minority population served by the hospital slated for closing—sufficient racial disparity was established. *Id.*

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When, and only when, an agency can reasonably conclude that everyone in the jurisdiction is potentially affected, investigating agencies can rely on Title VII and FHA disparate impact cases to support using an entire jurisdiction as the relevant population base.

- (b) Comparator evidence that is not coextensive with the population subject to the policy

While the better practice is to analyze the population actually subject to the challenged policy, courts have recognized that evidence may not be available to measure this directly. For example, if the claim includes an allegation that a particular policy or practice created a pool where a particular group's numbers were low precisely because the policy discouraged that group from applying, then plaintiffs must use some means to accurately estimate what the population makeup would have been without that policy or practice. *See, e.g., Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (noting that “[t]here is no requirement ... that a statistical showing of disproportionate impact must always be based on analysis of the characteristics of actual applicants” in part because “[t]he application process might itself not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory”).

In some cases, agencies facing this limitation may use evidentiary samples that are not coextensive with the population subject to the policy as long as those samples are representative of that population. For example, job applicants who actually take an allegedly discriminatory test, and whose pass rates can be compared for racially disparate results, represent only a portion of the affected population, which includes all potential job applicants. *See Elaine W. Shoben, Differential Pass-Fail Rates in Employment Testing: Statistical Proof Under Title VII*, 91 Harv. L. Rev. 793, 794 (1978); *Frazier v. Consol. Rail Corp.*, 851 F.2d 1447, 1452 (D.C. Cir. 1988). That does not mean pass rates are without evidentiary value; it just means decision-makers must attempt to use that information to determine the discriminatory effect the test would have on individuals in the relevant geographic area who could have taken the test.

Courts, in fact, routinely reject evidence when the sample is not sufficiently probative. In *Smith v. Xerox Corp.* 196 F.3d 358 (2d Cir. 1999) (overruled on other grounds by *Meacham v. Knolls Atomic Lab.*, 461 F.3d 134 (2d Cir. 2006)), for example, the court considered the process each Xerox work unit used when deciding which workers to lay off. Plaintiffs, alleging age discrimination company-wide, presented statistics showing the relative retention rates of older and younger workers only within their particular units. The court found this evidence inadequate, as it demonstrated only a varying level of disparity in those particular units and not that such an effect pertained to the company as a whole. *Id.* at 369–70. It concluded that “isolating a few

work-groups and analyzing the effect of [the company's policy] on each work-group is misleading at best" when the challenge is to the effect the policy causes company-wide. *Id.* at 370. Similarly, in *Darensburg*, plaintiffs attempted to challenge the impact of a portion of a transit system's expansion policy by presenting evidence regarding the impact on a particular group of minority bus riders.¹⁵ The court concluded that the expansion policy affected *all* transit users and held that it must therefore analyze the impact of the plan on *all* minority transit users, not just minority bus riders. 636 F.3d at 520.

Other times, the available evidence is of a pool that is *broad*er than those affected by the challenged policy. This evidence, too, can be useful as long as that broader pool is representative of the affected population. *See, e.g., EEOC v. Joint Apprenticeship Comm. of Joint Indus. Bd. of Elec. Indus.*, 186 F.3d 110, 119 (2d Cir. 1999) (using general population data, in addition to other statistical methods, to estimate the qualified labor pool). For example, in a challenge to a company's requirement that job applicants have high school diplomas or pass standardized tests, the Supreme Court accepted evidence of racial disparity in high school graduation rates statewide and in standardized test pass rates nationally. *Griggs*, 401 U.S. at 430 n.6. Similarly, in *Dothard*, 433 U.S. at 330, the Court accepted nationwide evidence of how many women met challenged height and weight requirements. In both cases, there was no reason to think that local conditions varied significantly from the broader ones.

In contrast, courts may reject evidence of racial disparity gleaned from broad statistics where there is a reason to question whether those statistics are representative of the affected population. For example, in *Johnson v. Uncle Ben's, Inc.*, 965 F.2d 1363, 1369 (5th Cir. 1992), the court rejected national statistics about education levels by race in a challenge to a company's promotion policy because those statistics were not necessarily representative of workers already working for the company and seeking promotion. Similarly, in *Fletcher v. Berkowitz Oliver Williams Shaw & Eisenbrandt*, 537 F. Supp. 2d 1028, 1030 (W.D. Mo. 2008), in a challenge to an employer's consideration of plaintiff's prior sexual assault conviction, the court rejected as immaterial the argument that African Americans were overrepresented in the larger pool of people with felony convictions. The court stated that the general felony data said nothing about the representation of African Americans among those with sexual assault convictions, which was the reason the employer terminated this employee.

¹⁵ The *Darensburg* complaint was brought under state law (California Government Code §11135), which contains language comparable to Title VI and provides explicitly for a private right of action. The court analyzed the prima facie case under Title VI and Title VII standards.

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Use of general population data can simplify an agency's disparate impact analysis where local demographic data about the population actually subjected to a challenged policy is simply not available. Part D discusses the critical role of agency data collection authority to meaningful disparate impact analyses. But agencies should use generalized data with caution: some showing must be made that evidence drawn from a national pool, or from another sample that is not coextensive with the population affected, is sufficiently and closely representative of the affected population.

iv. Determining the significance of the disparity

Once the relevant adversely affected and comparator populations are determined, investigating agencies must determine whether the disparity is large enough to matter, i.e., is it sufficiently significant to establish a legal violation. The magnitude of the disparity necessary may be difficult to define in some cases, but guidance can be drawn both from judicial consideration of this question and from federal agency guidelines. In many cases, courts have shied away from drawing clear lines. *See Clady v. Cty. of Los Angeles*, 770 F.2d 1421, 1428–29 (9th Cir. 1985); *accord Smith v. Xerox Corp.*, 196 F.3d at 366 (“[T]he substantiality of a disparity is judged on a case-by-case basis.”); *Groves*, 776 F. Supp. at 1526 (“There is no rigid mathematical threshold that must be met to demonstrate a sufficiently adverse impact.”). Some disparities are so self-evidently significant, however, that courts have seen no need to explain their reasoning beyond presentation of the statistical evidence. *See, e.g., Betsey*, 736 F.2d at 988 (building policy resulted in 54.3% of non-white tenant households receiving eviction notices, compared with 14.1% of white households); *Charleston Hous. Auth. v. U.S. Dep’t of Agric.*, 419 F.3d 729, 734 (8th Cir. 2005) (disparate impact caused by planned demolition of public housing units where 46 of the 47 families occupying units were African-American).

Conversely, courts are comfortable rejecting particularly small disparities, or those based on very small sample sizes, without explaining the mathematical basis for their conclusions. For example, one court found insufficient evidence of disparate impact based on sex where women were six of the thirty-eight applicants and received two of the fifteen interviews. As the court observed, if just one more female applicant had received an interview, women actually would have had a higher percentage of interviews granted. *Stout*, 276 F.3d at 1123 & n.2. Another court found insufficient disparate impact where “the pass rate for black applicants ... was 93% that of white applicants,” without opining on what might be a sufficient showing. *Moore v. Southwestern Bell Tele. Co.*, 593 F.2d 607, 608 (5th Cir. 1979) (per curiam). Importantly, plaintiffs have succeeded in establishing disparate impact, even with very small sample sizes, in cases where statistics were not necessary because the disparate effect was obvious or predictable. This approach is discussed above in subsection ii.

Enforcement agencies have developed guidelines to help identify sufficiently significant disparities in frequently recurring contexts. In employment discrimination cases, where the members of one race or other protected class are selected at four-fifths (or less) the rate of another (80% or less), the EEOC, DOJ, and the Department of Labor have adopted this formula for use in identifying evidence of disparate impact.¹⁶ Some courts have adopted this four-fifths cutoff as a rule of thumb when determining whether the amount of differential impact is sufficient. *See, e.g., Clady*, 770 F.2d at 1429 (finding that written exam for employment adversely affected Hispanics because they passed at less than four-fifths the rate of white applicants).

However, not every type of disparity lends itself to the use of the four-fifths rule, even with respect to employment decisions. Federal guidelines in employment cases clarify that the four-fifths (80%) rule is not dispositive and smaller differences in selection rates may nevertheless constitute adverse impact. 28 C.F.R. § 50.14(4)(D). Some courts have found a *prima facie* case where the disparity fell just short of four-fifths but the causation analysis (discussed below) was statistically significant (meaning the disparity is less likely due to chance) and, in the court's view, of practical import. *See, e.g., Groves*, 776 F. Supp. at 1527–28 (disparate impact established where defendant's evidence revealed black candidates met testing requirement at 82.3% the rate of white candidates, slightly above the 80% mark, but the causation analysis was “overwhelming[ly] statistically significant, showing that “the test itself, and not merely random sampling, has caused the disproportionate exclusion of blacks”); *Hill v. Metro. Atlanta Rapid Transit Auth.*, 591 F. Supp. 125, 129 (N.D. Ga. 1984) (acknowledging that disparate impact could still be established where minorities' selection rate was 81.55% that of white candidates), *rev'd in part on other grounds*, 841 F.2d 1533 (11th Cir. 1988).

As noted above, in addition to the four-fifths (80%) rule, courts have considered statistical significance—the difference between the expected and observed rates in terms of standard deviations—with a difference of two or three standard deviations to be statistically significant (Hazelwood test). Similarly, the “Shoben formula” recognizes a “Z-value” measuring the difference in the groups' success rates greater than 1.96 standard deviations to be statistically significant. *Groves*, 776 F. Supp. at 1526–28, citing *Richardson v. Lamar Cty. Bd. of Educ.*, 729 F. Supp. 806, 816 (M.D. Ala. 1989).

Some agencies have suggested guidelines for disparity that may be considered significant. Following the focus in *Groves* on overwhelming statistical significance (part of the causation analysis), the Department of Education's Office for Civil Rights has issued guidance in the context of high stakes testing indicating that, in general, a test has a disproportionate adverse impact if a statistical analysis shows a significant difference from the expected random

¹⁶ Uniform Guidelines for Employee Selection Procedures. *See* 29 C.F.R. pt. 1607 (EEOC); 28 C.F.R. § 50.14 (DOJ); and 29 C.F.R. ch. 60–3 (DOL).

distribution of test scores and pointing out that different courts have used different methods for determining disparate impact. U.S. Department of Education, Office of Civil Rights, *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers* (December 2000).¹⁷ See also EPA Investigation Guidance, 65 Fed. Reg. at 39,682 (“[W]here credible measures of [disparity] are at least a factor of 2 times higher in the affected population, OCR would generally expect to find disparate impact under Title VI”).

Some agencies may use other methods of evaluating disparity. Some disparity measures, for example, may consider differences in the magnitude of adversity/harm (e.g., level of exposure or risk). Agency guidelines may evaluate both the demographic disparity and the differences in the magnitude of the impacts. For example, EPA’s Title VI investigations guidance established a sliding scale that takes into account the degree of demographic disparity and the differences of degree in the health impact measure (e.g., rates of cancer risks). *Id.* (“[W]here a large disparity exists in terms of impact and a relatively slight disparity exists with regard to demographics (or vice versa), EPA will ordinarily attempt to balance these factors, taking into account the particular circumstances of the case.”). While this does not provide a uniform standard for determining whether any individual matter has a discriminatory effect, it makes clear that the agency regards these two factors—degree of health impact and degree of demographic disparity—as important components of the analysis.

The Federal Transit Administration’s approach to disparate impact analysis, like EPA’s, recognizes the need for flexibility in determining whether there is disparity and considers differences in degree related to adversity/harm. Certain recipients are required to adopt a disparate impact policy that establishes “a threshold for determining when adverse effects of service changes are borne disproportionately by minority populations.” FTA Title VI Circular at Chap. IV–13.¹⁸ The threshold should define “statistically significant disparity and may be presented as a statistical percentage of impacts borne by minority populations compared to impacts borne by non- minority populations.” *Id.*

d. Establishing causation

The final element of adverse disparate impact is causation. Even if the evidence establishes an adverse effect that is borne disproportionately by members of a protected group, this question remains: did the recipient *actually cause* that effect? As the court held in *Flores v. Arizona*, 48 F. Supp. 2d 937, 952 (D. Ariz. 1999), “[p]laintiff’s duty to show that the practice has disproportionate effect requires plaintiff to demonstrate a causal link between the practice and the disparate impact identified.” To establish a violation of its disparate impact provision, an

¹⁷ Available at <https://www2.ed.gov/offices/OCR/archives/pdf/TestingResource.pdf>.

¹⁸ The Circular is available at http://www.fta.dot.gov/legislation_law/12349_14792.html (last visited Nov. 18, 2016).

investigating agency must determine that the impact is causally linked to a recipient's policy or practice. *See Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1415 (11th Cir. 1993) (citations omitted) (plaintiff cannot make out a prima facie disparate impact claim if the evidence tends to show that even had the defendant not engaged in the challenged practice, the same disparate impact would nonetheless have existed).

Causation is frequently shown with statistics. To establish causation, the investigating agency may identify "statistical evidence of a kind and degree sufficient to show that the practice in question has *caused* the exclusion of [a particular group] because of their membership in a protected group." *Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1424 (9th Cir. 1990) (emphasis added) (citing *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988)). The statistical disparities must be sufficiently significant that they "raise ... an inference of causation." *Id.* As should already be clear, this method of proving causation is linked to the statistical proof of disparity discussed above; i.e., the same comparative population evidence is typically used to prove both causation and disparity. While the previous section looked at whether the magnitude of the disparity is large enough to matter, this analysis allows agencies to be sufficiently certain (at the specified statistical level) that the disparity is not caused by chance. In other words, is the difference statistically significant?

As discussed above, statisticians have their own established definitions of statistical significance that federal agencies can readily import in their analyses. *See, e.g.*, 28 C.F.R. § 50.14(4)(D). Federal regulations generally define statistical significance, consistent with the term's typical use in social sciences and other statistical inquiry, as a demonstration that the disparity has "a probability of no more than one (1) in twenty (20) to have occurred by chance." *Id.* § 50.14(14)(B)(5); *see also Castaneda v. Partida*, 430 U.S. 482, 496 n.17 (1977); *Alexander v. Louisiana*, 405 U.S. 625, 630 & n.9 (1972); *Watson*, 487 U.S. at 995 (O'Connor, J., plurality opinion) ("statistical disparities must be sufficiently substantial that they raise ... an inference of causation"). However, as discussed above there are multiple tests for statistical significance that allow for different confidence intervals (e.g. the Hazelwood test allows for statistical significance at 2-3 standard deviations from the expected rates and the Shoben formula allows 1.96 standard deviations). *See Groves*, 776 F. Supp. at 1526–28.

Regardless of the statistical significance measure used, the Supreme Court has emphasized the importance of "a robust causality requirement" in ensuring entities are not "held liable for racial disparities they did not create." *Inclusive Communities*, 135 S. Ct. at 2523 (citing *Wards Cove*, 490 U.S. at 653). Investigating agencies must carefully evaluate the causal connection between the challenged policy and any adverse disparate impacts identified. Yet, it is important to remember that the causation element is not a fault-based inquiry; the proper analysis is not about whether there are actual differences among applicants or beneficiaries of different races or why those differences exist. Rather, the sole question at this phase of the case should be whether the

recipient's policy in fact affects people of different races disproportionately. Causation is established where the evidence establishes that the recipient's policy or practice operates in this manner; there is no need for understanding why the policy results in the disparity at this step of the inquiry.

- Where a requirement that applicants have high school diplomas disproportionately excludes African Americans from the hiring process, it does not matter that the recipient is not at fault for African Americans not having high school diplomas at the same rate as whites. The causation inquiry does not involve consideration of whether societal factors external to the hiring process caused the disparate high school diploma rates. *Griggs*, 401 U.S. at 430–31.
- Where the denial of language assistance excludes individuals from meaningful access to the recipient's program based on national origin, it does not matter that the recipient did not cause students to lack English proficiency. The causation inquiry does not involve consideration of factors external to the education process that caused children not to know English. *Lau*, 414 U.S. at 568.
- Where an I.Q. test results in a disproportionate representation of African American children in special education classes, the overrepresentation cannot be “explained away” by external societal factors such as poor nutrition and poor medical care related to lower socioeconomic status. *Larry P.*, 793 F.2d at 983.

Other types of Title VI cases may involve a different type of causation analysis—one that explores the concrete proof connecting the recipient's practice to the alleged harms. For example, environmental justice cases often involve allegations that a recipient's action or inaction causes harm or that the recipient's permitting of a third party facility causes the harm. In these cases, establishing causation may involve scientific or other quantifiable proof that the challenged practice actually caused the alleged adverse impacts. This may involve proof connecting a specific facility to a specific adverse impact, such as harmful health effects, odor, noise, decrease in property values, etc. When such proof is not obtainable, the statistical tests discussed above will suffice.

For example, in complaint investigations alleging adverse impacts from the operation of recipient-permitted facilities, EPA has explained that the facts and circumstances of each complaint will determine whether a likely causal link exists. EPA recognizes a number of forms and types of evidence that could establish causation, including scientific proof of a direct link, prediction of potentially significant exposures and risks resulting from stressors created by the permitted activities or other sources, and other complex methodologies. EPA Investigations Guidance, 65 Fed. Reg. at 39,679. For an example of a causation analysis involving the risk of

exposure to a pesticide, see EPA's investigatory report in *Angelita C. v. California Department of Pesticides Regulation*, No. 16R-99-R9. EPA Office of Civil Rights, *Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9* at 32-33 (Aug. 25, 2011).¹⁹

e. Agency approaches to defining adverse disparate impact

As mentioned previously, federal funding agencies responsible for Title VI enforcement sometimes engage in rulemaking, issue formal guidance documents, and informal guidance such as letters to inform recipients of the types of adverse disparate impact (discriminatory effects) they must try to avoid. In the following illustrative examples of agency approaches to defining adverse disparate impact in specific applications, agencies have identified specific impacts prohibited by Title VI; identified factors they will consider in making such determinations on a case by case basis; and required (or recommended) that their recipients establish formal definitions.

- The Department of Transportation's Federal Transit Administration, which funds state and local transportation agencies, requires recipients to "define and analyze adverse effects related to major changes in transit service." FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Recipients, Chap. IV-13 (Oct. 1, 2012).²⁰ As part of FTA's requirement that recipients submit a multi-element "Title VI Program," recipients must adopt their own definitions of adversity, subject to DOT approval and subject to the requirement that the effect be "measured by the change between the existing and proposed service levels that would be deemed significant." *Id.* FTA provides additional guidance and examples of the types of service changes that could have an adverse effect, such as elimination of a transit route, rerouting an existing route, and increases in travel time.
- The Department of Justice, which provides funding to state court systems, has determined that court policies failing to provide appropriate language assistance to limited English proficient individuals in all types of proceedings and court-managed services, are adverse under DOJ's disparate impact regulation. DOJ made this determination after considering both the importance of the issues at stake in criminal and civil matters and the critical need for accurate communications. Accordingly, a *prima facie* violation is established where a court's language services policy or practice causes these types of harms. *See* Language Access Guidance Letter to State Chief Justices and State Court Administrators from the Assistant Attorney General (August 16, 2010).²¹

¹⁹ The report is available at <https://perma.cc/KP2X-JXFQ> (last visited Nov. 18, 2016).

²⁰ The Circular is available at http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf.

²¹ This letter is available at <https://perma.cc/5S4E-L8J6>.

- The Departments of Education and Justice have determined that certain student enrollment practices may chill or discourage student participation or exclude students based on their parents' or guardians' actual or perceived citizenship or immigration status, and that such an effect is adverse under agency Title VI disparate impact regulations. The Departments noted that school district must not prevent students from enrolling based either on their own citizenship or that of their parents: "[D]istricts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. Dep't of Educ. and Dep't of Justice, Dear Colleague Letter on the Rights of All Children to Enroll in Public Schools 2 (May 8, 2014).²²
- The Environmental Protection Agency, which provides funding to state environmental permitting agencies, has determined that where recipients issue pollution emission permits to facilities that may cause negative effects, these adverse effects could be sufficiently significant to establish adversity. Where agencies have not established specific benchmarks, EPA has provided guidance on the factors that agencies should consider in analyzing adversity. EPA observed that "no single analysis or definition of adverse disparate impact is possible due to the differing nature of impacts (e.g., cancer risk, acute health effects, odors) and the various environmental media (e.g., air, water) that may be involved." Rather, it said that it would "use environmental laws, regulations, policy and science as touchstones for determining thresholds for what is adverse." EPA Investigations Guidance, 65 Fed. Reg. at 39,654, 39,698.

2. The Recipient's Substantial Legitimate Justification

If the evidence establishes a prima facie case of adverse disparate impact, as discussed in the preceding sections, courts then determine whether the recipient has articulated a "substantial legitimate justification" for the challenged policy or practice. *Georgia State Conf. v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985). The justification inquiry is an important and appropriate means of ensuring recipients have "leeway to state and explain the valid interests served by their policies." *Inclusive Communities*, 135 S. Ct. at 2522.

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The sequential process that courts use, where a complainant offers prima facie evidence and the defendant offers a rebuttal or a "substantial legitimate justification" need not be how an agency conducts its investigation. Rather, an agency has discretion to gather and evaluate evidence of "substantial legitimate justification" as part of its initial investigation, or to make a preliminary finding and require recipients to articulate their defenses as a next step. For example, EPA Title VI guidance recognizes the "recipient may offer its justification following its receipt of the notice of complaint, or after a preliminary finding of non-compliance with Title VI or EPA's implementing regulations." EPA Draft Revised Investigations Guidance, 65 Fed. Reg. at 39,683.

²² The letter is available at <http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>.

In contrast to intentional discrimination cases, where recipients can offer legitimate non-discriminatory reasons for the challenged actions, a justification in a disparate impact case that merely dispels inferences of illegitimate *intent* is inadequate. “Substantial legitimate justification” in a disparate impact case is similar to the Title VII concept of “business necessity,” which requires an employer to show that the policy or practice in question is demonstrably related to a significant, legitimate employment goal. *Griggs*, 401 U.S. 433–36; *Wards Cove*, 490 U.S. at 659. After the plaintiff establishes a prima facie case of disparate impact, the defendant can attempt to show that the challenged practice “serves, in a significant way, the legitimate employment goals of the employer.” *Id.* Importantly, the concept of “business necessity” does not transfer exactly to the Title VI context because Title VI covers a broader scope of recipient practices. *See Inclusive Communities*, 135 S. Ct. at 2522–24 (recognizing the limitations on extension of the business necessity concept to Fair Housing Act cases).

Thus, while it is well-established that *unjustified* disparate impact violates agency Title VI regulations, the precise nature of the justification inquiry in Title VI cases is somewhat less clear in application. As discussed in more detail below, courts and agencies have articulated a number of different formulations to describe what constitutes a justification legally sufficient to permit an adverse disparate impact. In all of these formulations, this analysis requires a delicate balancing of recipients’ interests in implementing their policies with the substantial public interest in preventing discrimination. Because Title VI covers a vast array of federally funded programs, each with a different institutional mission, this highly fact-specific inquiry must be made carefully case by case.

Although determining a substantial legitimate justification is a fact-specific inquiry, Title VI case law and agency guidance set forth general requirements. For example, courts have required that the recipient show that the challenged policy was “*necessary to meeting a goal that was legitimate, important, and integral to the [recipient’s] institutional mission*” in order to establish a “substantial legitimate justification.” *Elston*, 997 F.2d at 1413 (emphasis added). Courts have evaluated whether the policy was “necessary” by requiring that the justification bear a “manifest demonstrable relationship” to the challenged policy. *Georgia State Conf.*, 775 F.2d. at 1418 (11th Cir. 1985).

SUBSTANTIAL LEGITIMATE JUSTIFICATION

Was the challenged policy necessary to meeting a goal that was legitimate, important, and integral to the recipient’s institutional mission?

Does the justification bear a manifest demonstrable relationship to the challenged policy?

Agency guidelines or regulations implementing Title VI incorporate similar formulations. *See, e.g.,* EPA Investigations Guidance, 65 Fed. Reg. at 39,654 (“Determining what constitutes an acceptable justification will necessarily be based on the facts of the case. Generally, the recipient would attempt to show that the challenged activity is reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient’s institutional mission.”); Fair Housing Act Regulations, 24 C.F.R. § 100.500(b)(1), (c)(2) (under the second step of the disparate impact burden shifting analysis, the defendant must prove that the proposed action is “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the defendant).

As is clear, this inquiry is fact-specific; this section does not present an exhaustive list of factors, but rather some of the considerations that may guide an investigating agency’s analysis.

AGENCY PRACTICE TIP

Agencies provide guidance concerning types of justifications they expect to consider when investigating particular case types. *See, e.g.,* HUD Office of General Counsel Guidance on Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate–Related Transactions (April 4, 2016), *available at* <https://perma.cc/A49W-XJNC> (resident safety and protecting property may be both substantial and legitimate, but housing providers must be able to prove that policies making housing decisions based on criminal history actually assist in protecting resident safety and/or property); EPA Draft Revised Investigations Guidance, 65 Fed. Reg. at 39,683 (explaining that when evaluating justifications for discriminatory environmental permitting decisions, EPA “expects to consider provision of public health or environmental benefits (e.g., waste water treatment plant) to the affected population from the permitting action to be an acceptable justification because such benefits are generally legitimate, important, and integral to the recipient’s mission”); DOJ Language Guidance Letter to State Courts, (Aug. 16, 2010), *available at* http://www.lep.gov/final_courts_ltr_081610.pdf (explaining how cost justifications will be evaluated in the language access context).

Federal funding agencies are uniquely qualified to provide such guidance because of their expert knowledge of their funded programs. Courts normally defer to agency guidance in evaluating specific types of disparate impact. *See, e.g., S. Camden Citizens in Action*, 145 F. Supp. 2d 446, 496 (D.N.J. 2001) (“In the absence of guiding legal precedent on the question of what constitutes a ‘substantial legitimate justification’ or a ‘legitimate nondiscriminatory reason’ in the context of this case, I shall look to EPA regulations and practice.”). As in all aspects of Title VI investigation, agencies should consider not only the recipient’s perspective, but also the views of the affected community in assessing whether benefits to the community outweigh the policy’s disproportionate adverse effects. *See, e.g.,* EPA Investigations Guidance, 65 Fed. Reg. at 39,683.

a. Is the proffered justification legitimate, integral to the recipient’s institutional mission, and important?

Agencies should first inquire whether the recipient offers a justification that is legitimate, integral to the recipient’s institutional mission, and important. *Elston*, 997 F.2d at 1413.

i. Legitimate

Recipients frequently articulate rationales that appear to be legitimate on their face. These rationales can be objective: for example, showing that the recipient considered multiple alternatives and selected the least damaging/most beneficial path. *See, e.g., New York City Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 72 (2d Cir. 2000); *see also Inclusive Communities*, 135 S. Ct. at 2523 (noting that “[z]oning officials ... must often make decisions based on a mix of factors, both objective (such as cost and traffic patterns) and, at least to some extent, subjective (such as preserving historic architecture)” and that “these factors contribute to a community’s quality of life and are legitimate concerns for housing authorities.”)

Where, however, a federally funded entity insists on implementing a policy despite its adverse disparate impacts, the investigating agency must scrutinize the recipient’s rationale to determine whether the evidence adequately supports it. A violation is established if the investigating agency finds that the evidence does not support the entity’s justification, and therefore is not legitimate. *See Elston*, 997 F. 2d at 1407. Federal Transit Administration guidance explains this critical point: “[I]f evidence undermines the legitimacy of the [recipient’s] asserted justification—that is, that the justification is not supported by demonstrable evidence—the disparate effects will violate Title VI, as the lack of factual support will indicate that there is not a substantial legitimate justification for the disparate effects.” FTA Title VI Circular, at ch. IV–16.

Court decisions show that agencies should be particularly skeptical of “subjective rationales” and should thoroughly investigate and analyze the facts to determine whether these rationales are supported by sufficient evidence. *See, e.g., Sandoval v. Hagan*, 197 F.3d 484, 490–91 (11th Cir. 1999), *rev’d on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001). In *Sandoval*, the Eleventh Circuit affirmed the district court’s determination that none of the facts supported the recipient state agency’s rationale for limiting driver’s license examinations only to people who spoke English. *Id.* The state agency offered several justifications for the English-only rule: highway safety concerns, exam administration difficulties, exam integrity, and budgetary constraints. *Id.* The district court found that the recipient had produced no evidence at trial that non-English speakers posed a greater driving safety risk than English speakers; the recipient had undermined its own safety argument by recognizing valid licenses from non-English speakers of other locales; making test accommodations for illiterate, deaf, and disabled drivers; and having previously offered the examination in fourteen languages without administrative difficulty. The court further noted that cost had not been a real factor in making the decision to administer the examination only in English and that the recipient could afford the costs of language assistance in light of its \$50 million dollar budget. *Id.* Affirming the district court, the Eleventh Circuit ruled that the state agency’s rationales constituted a pretext for the policy despite its established disparate impact on national origin minorities. *Id.*

The justification analysis used in Fair Housing Act disparate impact cases can also provide guidance for Title VI investigating agencies. The justification “must be supported by evidence and may not be hypothetical or speculative.” 24 C.F.R. §§ 100.500(c)(2), 100.500(b)(2); *see, e.g., Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc.*, 801 F. Supp. 2d 12, 16 (D. Conn. 2011) (explaining that where the “defendant presents objective evidence to support his assertions, the court is less wary of subjective explanations”) (citing *Soules v. HUD*, 967 F.2d 817, 822 (2d Cir. 1992)). The *Gashi* court found that the evidence did not support a housing authority’s justifications for its discriminatory occupancy limitation. The defendant argued that the local fire code mandated the challenged occupancy requirements and that “building infrastructure concerns” necessitated the policy. The court concluded, however, that the fire code defendants cited actually was not binding because it represented only national guidelines, and the defendants had no documentation to support their vague assertions regarding infrastructure concerns. *Id.* at 17–18. *See also Charleston Housing Authority v. U.S. Dep’t of Agriculture*, 419 F.3d 729, 741 (8th Cir. 2005) (rejecting as unsupported by the evidence defendant housing authority’s claim that demolition of public housing units occupied almost entirely by African Americans was justified by a desire for low-income housing density reduction, need to eliminate a housing design that contributed to the concentration of crime and drug use, and lack of funding for necessary improvements).

It is important for investigating agencies to evaluate the veracity of any cost-based justifications the recipient puts forward. A monetary justification for a policy or practice (or lack thereof) will often fail because of a lack of evidence. *See, e.g., Sandoval v. Hagan*, 7 F. Supp. 2d 1234, 1312 (M.D. Ala. 1998) (finding defendant’s cost argument unsupported by the evidence because translation services at issue could be obtained by alternative cost-effective means); *aff’d*, 197 F.3d 484 (11th Cir. 1999) *rev’d sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001); *Charleston Hous. Auth.*, 419 F.3d at 742; Department of Justice, Civil Rights Division, Complaint No. 171–54M–8, *Letter to N.C. Courts from Assistant Attorney General* (March 8, 2012) at 15–16 (rejecting the recipient’s cost justification in part because it had access to new funds, none of which increased language access services in the courts; the cost of providing services was a small fraction of its operating budget; and it prevented courts from providing interpreters even when there would be no financial cost to do so);²³ *but see NAACP v. Wilmington Med. Ctr., Inc.*, 491 F. Supp. 290, 342 (1980) (crediting defendant’s evidence that the costs associated with avoiding relocation of medical center from an urban to suburban location would require borrowing well beyond defendant’s budget).

Finally, a recipient cannot simply contend that it followed other applicable rules governing site selection or permit approvals to establish a legitimate justification. *See S. Camden Citizens in Action*, 145 F. Supp. 2d at 496 (rejecting defendant’s argument that the challenged facility’s

²³ Letter from Assistant Attorney General to Director of North Carolina Administrative Office of the Courts (Mar. 8, 2012), available at <https://perma.cc/69Q6-NALT>.

compliance with the National Ambient Air Quality Standard constitutes a substantial, legitimate justification for its permitting decision). Mere compliance with rules unrelated to civil rights prohibitions does not legitimize a justification that would otherwise be insufficient under Title VI to justify adverse disparate impacts. In most instances, determining compliance with other rules or requirements involves reasoning based exclusively on those rules and “does not include considerations required by Title VI.” *Id.* at 496.

ii. Integral

Federal funding agencies should also consider the type of recipient in evaluating the adequacy of the recipient’s proffered justification. Different types of institutions obviously have different interests. What is central to the mission of one type of recipient may be merely tangential to, or even contrary to, the central mission of another. *See Wilmington Med. Ctr.*, 491 F. Supp. at 316 (acknowledging that Title VI could be applied to a wide range of entities and to an equally diverse range of decisions and, therefore, the nature of the justification required might vary from case to case). For instance, crime reduction may be part of a law enforcement agency’s integral institutional mission, but may be only minimally or even unrelated to the mission of other types of public entities.

iii. Important

The investigating agency’s evaluation of the importance of a recipient’s stated justification involves weighing the reason for implementing the challenged policy or practice against the harm it causes. *See NAACP v Med. Ctr., Inc.*, 657 F.2d 1322, 1350 (3d Cir. 1981) (en banc) (“The content of the rebuttal or justification evidence cannot be determined in the abstract. It must be related to the precise impacts suggested by the plaintiffs’ evidence.”); *see also Gashi*, 801 F. Supp. 2d at 16 (citing *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 929, 937 (2d Cir. 1988), *aff’d*, 488 U.S. 15 (1988) (“After the defendant presents a legitimate justification, the court must weigh the defendant’s justification against the degree of adverse effect shown by the plaintiff.”). Courts have also recognized that the degree of adverse impact that a challenged policy or practice causes can affect the sufficiency of the recipient’s justification. *See, e.g., Clady v. Cty. of Los Angeles*, 770 F.2d 1421, 1432 (9th Cir. 1985) (“As a general principle, the greater the test’s adverse impact, the higher the correlation which will be required.”). Generally, the more serious, significant, or widespread the adverse disparate impacts the challenged policy causes, the more difficult it will be for the recipient to establish a sufficient reason for implementing the policy.

b. Does the challenged policy bear a demonstrable relationship to the recipient's stated objective?

Even if the recipient points to a legitimate, important goal that is integral to its institutional mission, the discriminatory policy or practice must also bear a demonstrable relationship to that goal. *Georgia State Conf.*, 775 F.2d. at 1418. If it does not, implementation of that policy or practice violates Title VI. Accordingly, the investigating agency must take a hard look at the connection between the challenged policy or practice and the recipient's stated objective.

For example, in *Leaders for Equality and Action in Dayton (LEAD) v. City of Beavercreek*, the Federal Highway Administration (FHWA) found that the City Council's refusal to approve the construction of three bus stops caused unjustified disparate impact by denying minority residents public transit access to a shopping mall, a large medical center, jobs, and other essential services in Beavercreek. FHWA Office of Civil Rights, Letter from Associate Administrator for Civil Rights, DOT #2012-0020, at 15-16 (June 26, 2013). The City attempted to justify its decision by arguing, among other things, that installation of police call boxes and "state of the art" video surveillance would be necessary to protect the public and reduce the risk of crime at the stops. *Id.* at 12. FHWA acknowledged the City had a legitimate, important goal to ensure public safety, but found the record contained insufficient evidence to show the lack of call boxes and video surveillance at other comparable stops presented a public safety risk. *Id.* In other words, the City did not establish that the action taken bore a demonstrable relationship to the stated goal. Moreover, the City offered no evidence that security and public safety were serious issues at comparable bus stops. *Id.* The FHWA concluded that the City failed to prove the necessary connection between the legitimate justification—public safety—and the challenged practice—the refusal to approve the construction of the three bus stops based on the asserted necessity to install police call boxes and video surveillance equipment.

c. Special considerations: site selection or facility closure

Many Title VI cases involve challenges to site selection decisions, such as the locations selected for construction of highways or facilities that will have negative consequences for the surrounding community. Site selection cases can also involve challenges to the closure or relocation of desirable facilities, such as schools or hospitals. In such cases, courts have tended to merge the initial justification analysis with the final step of the disparate impact burden shifting framework, i.e., consideration of less discriminatory alternatives. That step is discussed in detail in Section 3 below. In determining the sufficiency of the recipient's proffered reasons for the discriminatory siting or closure decision, courts consider not only whether the construction or closure was necessary to begin with but also whether the recipient can justify selection of the particular site over alternatives. *See, e.g., Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 127 (S.D. Ohio 1984). These cases show that consideration of less

discriminatory alternatives is often linked to the “substantial legitimate justification” analysis, and agencies therefore should carefully consider recipients’ site selection process, including alternatives, when analyzing justification.

For example, in *Damian*, the court found that plaintiffs made a prima facie showing that recipients’ decision to build a new freeway would have a discriminatory effect because the freeway would travel through predominately minority neighborhoods, the majority of people displaced by the construction were racial minorities, and the disruptions and other negative impacts caused by the construction and eventual highway operation would fall disproportionately on those minority neighborhoods. *Id.* Nonetheless, the court further found that the recipients had met their burden of justifying the location of the interstate because the major alternative location would have had a substantially greater impact on minorities, and the recipients had selected the final freeway location “so as to minimize impacts upon minority neighborhoods,” avoiding most of the neighborhoods that were 90% racial minorities. *Id.* Critically, it was not enough to show that a new freeway was needed; rather, the court demanded that the recipient justify the specific location selected. *See also Bryan*, 627 F.2d at 617–18 (where public officials made a choice to close one of 17 municipal hospitals, it was “the choice of this particular hospital that must be justified”).

3. Less Discriminatory Alternatives

If a substantial legitimate justification for the recipient’s discriminatory policy or practice is identified, the investigating agency must also determine whether there are alternative practices that may be comparably effective with less disparate impact. Title VI requires recipients to implement a “less discriminatory alternative” if it is feasible and meets their legitimate objectives. *Elston*, 997 F.2d at 1407, 1413; *Georgia State Conf.*, 775 F.2d at 1417. This is a critical—and sometimes overlooked—stage of the investigation. Even if the recipient demonstrates a substantial legitimate justification, the challenged policy will nevertheless violate Title VI if the evidence establishes an alternative that meets this test.

Courts have been willing to thoroughly analyze alternatives, particularly where the recipient had considered and rejected them and thus the record was already developed. *See, e.g., Damian*, 608 F. Supp. 119–20 (conducting a thorough review of alternative sites for highway or other methods, such as light rail or public transportation). Where Title VI plaintiffs challenged broad institutional decisions, however, courts were sometimes reluctant to conduct a searching analysis of alternatives. *See, e.g., Bryan*, 627 F.2d at 619 (“We are skeptical of the capacity and appropriateness of courts to conduct such broad inquiries concerning alternative ways to carry out municipal functions. Once a court is drawn into such a complex inquiry, it will inevitably be assessing the wisdom of competing political and economic alternatives.”).

Federal funding agencies, on the other hand, are subject matter experts charged with specific Title VI enforcement duties. As a result, they are well-equipped to analyze alternatives thoroughly and they should evaluate carefully potential less discriminatory alternatives. This section discusses (a) who bears the responsibility to establish less discriminatory alternatives, (b) how evidence of less discriminatory alternatives must be specific, (c) how proposed alternatives must meet the recipient's objectives, and (d) how less discriminatory alternatives may be of a different type than the challenged policy and can be achieved through mitigation measures.

a. Evidentiary burdens

In disparate impact lawsuits, once the defendant establishes a substantial legitimate justification, the burden shifts back to the plaintiff to identify less discriminatory alternatives to the challenged policy or practice. *Powell v. Ridge*, 189 F.3d 387, 394 (3d Cir. 1999) (citing *Georgia State Conf.*, 775 F.2d at 1417). In other words, the defendant is not obligated to prove that there were no such alternatives, and the burden of persuasion remains with the plaintiff to prove that there were. *But cf. Damian*, 608 F. Supp. at 128 (recognizing “there would be some question whether defendants were required by federal law to consider alternatives with less disparate impact” under Title VI).

In contrast, in agency Title VI administrative investigations, the evidentiary burden, as previously explained, rests with the investigating agency rather than with the complainant. EPA guidance explains this important distinction:

The investigation of Title VI administrative complaints by [EPA] does not involve an adversarial process, as in litigation, between the complainant and the recipient. Rather, it should be viewed as EPA investigating allegations that EPA financial assistance is being used improperly. Consequently, the complainants do not have the burden of proving that their allegations are true and *are not obligated to offer less discriminatory alternatives*. Instead, EPA has the responsibility to determine whether a violation exists and, where appropriate, to uncover less discriminatory alternatives. Nonetheless, EPA encourages complainants to provide whatever relevant information they may have.

EPA Investigations Guidance, 65 Fed. Reg. at 39,696 (emphasis added). Moreover, Title VI regulations require the recipient to provide the investigating agency with the data and information necessary to make this determination.

AGENCY PRACTICE TIP

Although agencies bear the burden of evaluating less discriminatory alternatives, agencies sometimes impose additional requirements on recipients to consider alternatives before taking action. These requirements can affect the legal framework by requiring recipients to develop the evidentiary record related to alternatives as a matter of course, before and regardless of whether an administrative complaint is even filed. Such requirements recognize that the recipient is in the best position to complete this task, having the best understanding of its goals, and far more ready access to the information necessary to identify alternatives and conduct a meaningful analysis. *See Med. Ctr.*, 657 F.2d at 1355 (Gibbons, J., concurring and dissenting). Courts have recognized that agencies have authority to impose additional obligations. *See, e.g., Damian*, 608 F. Supp. at 128.

Many agencies have established additional requirements related to less discriminatory alternatives, under both Title VI and other authorities. For example, the Federal Transit Administration requires certain recipients to consider alternatives before implementing key decisions. A recipient's failure to do so, and to gather sufficient data to establish it has selected the least discriminatory alternative, is a procedural violation of agency regulatory requirements, and may put the recipient at risk of a substantive violation as well. *See* FTA Title VI Circular, Chap IV–16. FTA explains the requirement to examine alternatives as follows:

Examining Alternatives. If the transit provider determines that a proposed service change will have a disparate impact, the transit provider shall analyze the alternatives ... to determine whether alternatives exist that would serve the same legitimate objectives but with less of a disparate effect on the basis of race, color, or national origin. The existence of such an alternative method of accomplishing the transit provider's substantial and legitimate interests demonstrates that the disparate effects can be avoided by adoption of the alternative methods without harming such interests.... At that point, the transit provider must revisit the service changes and make adjustments that will eliminate unnecessary disparate effects on populations defined by race, color, or national origin. Where disparate impacts are identified, the transit provider shall provide a meaningful opportunity for public comment on any proposed mitigation measures, including the less discriminatory alternatives that may be available.

Id.

In some cases, a recipient is responsible for assisting in the development of a record of alternatives because it is involved in a project covered by the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. This record may contain evidence that is also relevant and useful in determining compliance with Title VI. For example, recipients of funding from the Federal Highway Administration may be responsible for assisting in the development of the record of alternatives that the FHWA reviews in the NEPA process and related investigations. The FHWA follows the federal-government wide regulations implementing the procedural

provisions of NEPA issued by the Council on Environmental Quality (CEQ) (40 C.F.R. parts 1500–1508) and has supplemented these procedures to take into account its programs. The CEQ regulations require a rigorous assessment of all reasonable alternatives. *See* 40 C.F.R. § 1502.14(a) (explaining that environmental impact statements under NEPA require the entity to “[r]igorously explore and objectively evaluate all reasonable alternatives”). The FHWA regulations require applicants to use early coordination to identify alternatives to the proposed action. *See* 23 C.F.R. §§ 771.119(b), 771.123(b)–(c), and 771.125(a)(1).

b. Specificity of evidence of alternatives and relationship to the recipient’s mission

Investigating agencies should thoroughly review the evidence regarding potential alternatives. Plaintiffs in private litigation often fail to establish “less discriminatory alternatives” because their evidence of alternatives is not sufficiently specific. *See, e.g., N.Y.C. Envtl. Justice All.*, 214 F.3d at 72 (in challenge to decision to sell community gardens in order to build new housing and foster urban renewal, plaintiffs suggested other vacant lots but presented no evidence that the defendant owned the lots or that they were suitable for housing); *Damian*, 608 F. Supp. at 128 (alternative “indirect” route for challenged highway was too speculative, there was no indication of specific route, economic cost, or social or environmental impacts); *Lucero v. Detroit Pub. Sch.*, 160 F. Supp. 2d 767, 797 (E.D. Mich. 2001) (in challenge to school siting decision, plaintiffs argued that an alternate site would have been more appropriate, but failed to identify another viable site). Before finding a Title VI violation due to the availability of a “less discriminatory alternative,” agencies should determine that the evidence is sufficient and concrete, and not speculative.

Plaintiffs’ claims have also failed, notwithstanding an adverse impact, because plaintiffs could not identify an alternative that satisfies all of the defendants’ needs. *See, e.g., Elston*, 997 F.2d at 1413 (the only alternative identified did not provide sufficient land to accommodate defendants’ needs); *Damian*, 608 F. Supp. 120 (alternative sites for highway or other transportation options, such as light rail, public transportation, etc., were insufficient to meet the traffic demands served by added highway); *African Am. Legal Def. Fund, Inc. v. New York State Dep’t of Educ.*, 8 F. Supp. 2d 330, 338 (S.D.N.Y. 1998) (in challenge to public school funding formula, plaintiff’s proposed alternative formula based on enrollment instead of attendance was legally insufficient because it failed to meet the objectives served by the existing formula); *but see Meek v. Martinez*, 724 F. Supp. 888, 906 (S.D. Fla. 1987) (in challenge to state formula for distributing funds under the Older Americans Act, plaintiff demonstrated that less discriminatory alternatives to the current formula were readily available and could be feasibly implemented).

In *Goshen Road Environmental Action Team v. U.S. Dep’t of Agriculture*, 176 F.3d 475, 1999 WL 187264 (4th Cir. 1999) (unpublished opinion), the court concluded that the alternatives plaintiffs presented for the siting of a wastewater treatment facility were unsuitable. *Id.* at *3.

The recipient successfully argued that two alternative sites were poor choices because of the risk raw sewage could be released into a major river if the infrastructure in either location were to deteriorate. Other sites were unsuitable because of the poor quality of the soil. Of the two remaining potential sites, engineers selected the existing site because it required slightly less land, had better soil quality, its road frontage provided better access, and it was further from the town. *Id.* The court concluded the plaintiff had adduced “no scientific evidence of its own supporting its claim that other equally effective sites existed.” *Id.*

Similarly, in *Darensburg v. Metropolitan Transportation Commission*, 611 F. Supp. 2d. 994, 1060 (N.D. Cal. 2009), the district court held that plaintiffs did not show that the alternatives proposed would be “equally effective while causing less racial disparity.” In this challenge to a metropolitan planning organization’s complex scheme for allocating funding to various transit projects, plaintiff proposed a number of alternative funding allocation methods. The court took each proposal in turn, holding that plaintiffs failed to adduce sufficient evidence of their plans’ effectiveness. *Id.* at 1060–61. For instance, plaintiffs’ expert argued the recipient could first use federal funds for operations because it cannot collect interest on those funds, then use the remaining funds, which can earn interest, to pay for longer term projects. The court rejected this alternative because the plaintiff failed to show that the amount of interest that could be earned would be large enough to meet the recipient’s needs. *Id.* at 1060.

Importantly, alternatives need not be merely substitutes of the same type as the challenged practice, but may include practices or policies of a different manner or that include other actions by the defendant that ameliorate the disparate impact. *See id.* at 998–1000, 1060–61. For example, in *Medical Center*, plaintiffs challenged the recipient’s intention to close some city hospitals and build the primary medical facility in the suburbs, farther away from a predominantly minority community. *Med. Ctr.*, 657 F.2d at 1325. Assuming a discriminatory effect resulted from the new location, the court upheld the action because the recipient considered and rejected various alternatives for legitimate reasons, noting that the alternative locations would not meet the recipient’s needs. The court also noted that the recipient had agreed to provide a shuttle service between the several hospitals for patients, visitors, and employees to lessen any hardship on people who needed to use the suburban facility. *Id.* at 1331–32, 1337.

Similarly, in the context of environmental permitting complaints, the use of “practical mitigation measures associated with the permitting action could be considered as less discriminatory alternatives, including, in some cases, modifying permit conditions to lessen or eliminate the demonstrated adverse disparate impact.” EPA Investigations Guidance, 65 Fed. Reg. at 39,683.

AGENCY PRACTICE TIP

These cases and guidelines show that “less discriminatory alternatives” may take the form of mitigation measures to be applied to the original challenged practice. Accordingly, investigating agencies should ensure that they consider not only alternative policies and practices when evaluating “less discriminatory alternatives,” but also the measures the recipient could implement in order to lessen the harm that the challenged practice causes. Informal resolution efforts often involve identification of mitigation efforts which, if applied, would result in compliance with Title VI through implementation of a less discriminatory alternative.

D. Agency Data Collection Authority and Measuring Disparate Impact

In many disparate impact cases, particularly those in which federal guidelines have not already established the types of impacts that are per se unlawful, demographic data will be important to the investigating agency’s analysis. *See Darenburg*, 636 F.3d at 522 (attributing plaintiffs’ loss to the lack of precise data necessary to determine the extent to which a project harmed minorities to a greater extent than regional-level statistics may have suggested).

Title VI regulations provide agencies with a clear mandate to collect the data necessary to ensure compliance with their Title VI disparate impact regulations. The Department of Justice Title VI coordination regulation states that “[e]xcept as determined to be inappropriate ... federal agencies ... shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI.” 28 C.F.R. § 42.406(a). The coordination regulation then gives various examples of the types of data that agencies generally should require recipients to submit, including the racial and ethnic composition of the eligible population, the racial and ethnic impact of the location of facilities connected with the program, and any relocation involved in the program. *Id.* § 42.406(b). The coordination regulation also contemplates that agencies will collect “demographic maps, [and] the racial composition of affected neighborhoods or census data” where they are necessary to understand the considerations above, but “only to the extent that it is readily available or can be compiled with reasonable effort.” *Id.* § 42.406(c).

Consistent with these provisions, all agency Title VI implementing regulations specifically require that recipients collect and provide access to information that is necessary to determine compliance.²⁴ The applicable provision typically appears under the heading “compliance reports,” and mandates the following:

²⁴ These accountability requirements are not unique to federal financial assistance from DOJ but rather are a universal feature of the grant-making system. Every agency that has promulgated Title VI regulations includes similar or identical accountability requirements. *See* 7 C.F.R. § 15.5(b) (USDA); 22 C.F.R. § 209.6(b) (USAID); 15 C.F.R. § 8.7(b) (Dep’t of Commerce); 45 C.F.R. § 1203.6(b) (Corp. for Nat’l and Community Serv.); 32 C.F.R. § 195.7(b) (DOD); 34 C.F.R. § 100.6(b) (Dep’t of Educ.); 10 C.F.R. § 1040.89–3 (Dep’t of Energy); 40 C.F.R. §

Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to ... ascertain whether the recipient has complied or is complying with this subpart.

See, e.g., id. § 42.106(b) (DOJ). This provision also requires the primary recipient to obtain from its subrecipients, and have available for agency review, such compliance reports “as may be necessary to enable the primary recipient to carry out its obligations.” *Id.*

These regulations permit agencies to exercise broad discretion in determining what sources of information “may be pertinent” to ascertain compliance with Title VI. Although rarely a litigated issue because the vast majority of recipients cooperate with agency data requests, in *United States v. El Camino Community College District*, 600 F.2d 1258, 1260 (9th Cir. 1979), the Ninth Circuit held that “[i]n exercising its investigatory powers” under Title VI, a federal agency “must have substantial latitude in scrutinizing policies and practices of the institution” for possible discrimination.

Moreover, these provisions are not limited to evidence gathered during a formal complaint investigation or compliance review but also allow for agency data collection during monitoring efforts. That is, agencies need not suspect discrimination in order to collect relevant demographic data but may do so to monitor or evaluate compliance. Courts have recognized that routine monitoring is a form of enforcement, *Gillis v. U.S. Dep’t of Health and Human Servs.*, 759 F.2d 565, 575 (6th Cir. 1985), and that agencies have broad discretion in selecting the data they need to fulfill the congressional mandate to enforce Title VI through monitoring. *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1126 (6th Cir. 1996) (noting that “enforcement decisions involve a complicated balancing of a number of factors which are peculiarly within the agency’s expertise, and the agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.”) (citing *Heckler v. Chaney*, 470 U.S. 821, 830–31 (1985)).

Agency approaches to data collection. Under the authorities described above, many agencies collect data that is helpful in ensuring Title VI compliance. For example, the Federal Transit Administration requires its grant recipients that serve areas with populations over 200,000 to collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving federal financial assistance, including the

7.85 (EPA); 41 C.F.R. § 101–6.29–3 (GSA); 45 C.F.R. § 80.6(b) (HHS); 6 C.F.R. § 21.9 (DHS); 24 C.F.R. § 1.6(b) (HUD); 43 C.F.R. § 17.5(b) (Dep’t of the Interior); 29 C.F.R. § 31.5(b) (DOL); 14 C.F.R. § 1250.105(b) (NASA); 45 C.F.R. § 1110.6 (Nat’l Found. on the Arts and Humanities); 45 C.F.R. § 611.6(b) (NSF); 10 C.F.R. § 4.33 (NRC); 5 C.F.R. § 900.406 (OPM); 13 C.F.R. § 112.9(b) (SBA); 22 C.F.R. § 141.5(b) (Dep’t of State); 18 C.F.R. § 1302.6(b) (TVA); 49 C.F.R. § 21.9(b) (DOT); 38 C.F.R. § 18.6(b) (VA); 18 C.F.R. § 705.6(b) (Water Resources Council).

preparation of demographic and service profile maps and charts. FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Recipients, ch. IV–7 (August 28, 2012). In addition, FTA requires these recipients to analyze all major service changes to determine their effects on low income and minority communities. *Id.* Ch. IV–13. These requirements place the responsibility on recipients to analyze their actions, and to collect the data FTA would require in order to check its recipients’ analyses. Similarly, Department of Labor regulations mandate that recipients maintain information required for assessing compliance with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act. 29 C.F.R. §§ 38.41–38.43. The “system and format in which the records and data are kept must be designed to allow ... statistical or other quantifiable data analyses to verify the recipient’s compliance” *Id.* § 38.41(b)(1). The Department of Education maintains extensive reporting requirements to ensure that public school districts and elementary and secondary schools are meeting their civil rights obligations. Dep’t of Educ., *About the Civil Rights Data Collection (CRDC)*.²⁵

AGENCY PRACTICE TIP

The ready availability of demographic data assists agencies in prioritizing complaint investigations, selecting recipients for compliance reviews, and conducting targeted outreach. Agencies should use this authority to ensure effective enforcement of their disparate impact regulations. Where a recipient does not fully cooperate with an agency’s request for information, and compliance cannot be achieved voluntarily, the agency may refer the matter to the Department of Justice for judicial enforcement. Agencies should consider establishing additional requirements for certain recipients to provide information routinely to assist in monitoring compliance with the Title VI disparate impact regulations.

Such data give recipients themselves a better understanding of the impact of their actions and decisions on protected groups, including the ability to conduct self–assessments of their own compliance with Title VI. For example, in the context of health disparities, HHS has urged its recipients to consider strategies to collect and use racial and ethnic data to help eliminate disparities. Letter from Thomas E. Perez, Director, HHS Office for Civil Rights & David Satcher, Surgeon General, to various recipients (Jan. 19, 2001) (explaining ways in which health care providers can analyze race and ethnicity data to ensure provision of services to minorities, identify differences in the quality of care among various geographic, cultural, and ethnic groups, provide culturally and linguistically appropriate services, and alert recipients to potential Title VI issues). Letter from Dir., Office for Civil Rights, Dep’t Health and Human Servs. and Assistant Sec’y for Health and Surgeon Gen. to President, American Diabetes Assoc. (Jan. 19, 2001) (on file with Dep’t of Justice, Civil Rights Div.).

²⁵ Dep’t of Educ., *About the Civil Rights Data Collection*, available at <http://www2.ed.gov/about/offices/list/ocr/data.html>. Data collected by the CRDC are available at <http://ocrdata.ed.gov>.

SECTION VIII: PROVING DISCRIMINATION - RETALIATION**A. Introduction**

It is well-settled that Title VI supports retaliation claims. *See, e.g., Peters v. Jenney*, 327 F.3d 307, 318 (4th Cir. 2003); *Chandamuri v. Georgetown Univ.*, 274 F. Supp. 2d 71, 83 (D.D.C. 2003); *Gutierrez v. Wash. Dep't of Soc. & Health Servs.*, CV-04-3004-RHW, 2005 WL 2346956, at *5 (E.D. Wash. Sept. 26, 2005). When a person reasonably believes that he or she has been the victim of discrimination that Title VI or other federal law prohibits, or has witnessed another person being discriminated against, that person should be able to report the alleged discrimination without fear of retaliation or fear that doing so will further jeopardize accessing benefits or services. Similarly, a person should be free to access the services, programs, and activities that federal financial assistance supports without fear that a recipient might discriminate against him or her merely for seeking access.

The Supreme Court has defined retaliation as an intentional act in response to a protected action. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005). Citing *Jackson*, the court in *Gutierrez* underscored the intentional nature of a retaliation complaint: “Retaliation is, by definition, an intentional act. It is a form of “discrimination” because the complainant is being subjected to differential treatment.” *Gutierrez*, 2005 WL 2346956, at *5. The complained of matter need not be a complaint; it can be any lawful conduct that an individual engages in connected with a protected right. “The very concept of retaliation is that the retaliating party takes action against the party retaliated against after, and because of, some action of the latter.” *Fed. Mar. Bd. v. Isbrandtsen Co.*, 356 U.S. 481, 514 (1958). It carries with it the notion of “getting even.” *See id.* As noted in a 2011 law review article:

Retaliation is a deliberate action used to send a clear message that complaining is unwelcome and risky. It is employed to instill fear in others who might consider making a complaint in the future. Those with cause for complaining are frequently among the most vulnerable in an institution. Once they complain, they are labeled “troublemakers.” Retaliation, and the fear of retaliation, becomes a potent weapon used to maintain the power structure within the institution.

Ivan E. Bodensteiner, *The Risk of Complaining—Retaliation*, 38 J.C. & U.L. 1, 1 (2011).

This chapter on retaliation provides an overview of the legal authority for a private party to bring a retaliation claim under Title VI to an agency or in court, addresses who has standing to bring a retaliation complaint, and identifies what an agency should look for when assessing the merits of a retaliation allegation.

B. Legal Authority

Title VI does not include an express provision prohibiting retaliation.¹ Nonetheless, courts, including the Supreme Court, have held that various anti-discrimination statutes contain an implied cause of action for retaliation based on the general prohibition against intentional discrimination. *See, e.g., Jackson*, 544 U.S. at 173 (“Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action”). A statute that prohibits intentional discrimination implicitly prohibits acts of retaliation for complaints about or opposition to discrimination. *See Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237 (1969) (a prohibition on racial discrimination includes an implicit prohibition on retaliation against those who oppose the discrimination); *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 451 (2008) (a race discrimination statute encompasses retaliation actions as Congress and long line of precedent intended); *Gomez-Perez v. Potter*, 553 U.S. 474, 479 (2008) (ADEA federal-sector provision that prohibits age discrimination implicitly covers claims of retaliation for filing an age discrimination complaint); *Peters*, 327 F.3d at 318-19 (prohibition against retaliation is implicit in the text of Section 601 of Title VI).

In *Jackson*, the Court explained how retaliation constitutes intentional discrimination:

Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination. Retaliation is, by definition, an intentional act. It is a form of “discrimination” because the complainant is being subjected to differential treatment. Moreover, retaliation is discrimination “based on sex” because it is an intentional response to the nature of the complaint: an allegation of sex discrimination. We conclude that when a funding recipient retaliates against a person *because* he complains of sex discrimination, this constitutes intentional “discrimination” “based on sex,” in violation of Title IX.

Jackson, 544 U.S. at 173-74 (citations omitted). The Court also noted that the language in the statute itself supplies sufficient notice to a recipient that it cannot retaliate against those who complain of discrimination. *Id.* at 183.

For Title VI, as discussed elsewhere in this manual, Section 601 prohibits discrimination based on race, color, or national origin, while Section 602 authorizes and directs federal departments

¹ By comparison, *see* Fair Labor Standards Act of 1938, 29 U.S.C. § 215(a)(3); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a); the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(d); the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12203(a)-(b); the Family and Medical Leave Act of 1993, 29 U.S.C. § 2615; the National Labor Relations Act, 29 U.S.C. § 158(a)(4); and the Equal Pay Act, 29 U.S.C. § 215(a)(3).

and agencies that extend financial assistance to issue rules, regulations, or orders to effectuate Section 601. Under this authority, most federal grant-making agencies have included an anti-retaliation provision in their Title VI regulations.² The DOJ regulation provides the following:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subpart.

28 C.F.R. § 42.107(e); *see also Johnson v. Galen Health Insts., Inc.*, 267 F. Supp. 2d 679, 695 (W.D. Ky. 2003) (Title IX anti-retaliation provision cuts to the core of [its] ban on intentional discrimination and is covered by that section's existing cause of action).

Retaliatory behavior needs to be barred irrespective of whether the underlying claim is based on intent or disparate impact. Although one Court of Appeals has found that a private plaintiff cannot pursue a retaliation claim in court based on his or her opposition to alleged disparate impact discrimination, Title VI does not grant recipients a license to threaten individuals or prevent them from bringing disparate impact complaints to the government, which has the ability to pursue disparate impact claims in court and in the administrative process.³

² Other federal funding agencies' regulations also bar retaliation. *See* 5 C.F.R. § 900.407(e) (Office of Personnel Mgmt.); 6 C.F.R. § 21.11(e) (Dep't of Homeland Sec.); 7 C.F.R. § 15.7 (Dep't of Agric.); 10 C.F.R. § 1040.104(d) (Dep't of Energy); 10 C.F.R. § 4.45 (Nuclear Regulatory Comm'n); 13 C.F.R. § 112.10(f) (Small Bus. Admin.); 14 C.F.R. § 1250.106(e) (NASA); 15 C.F.R. § 8.9(a) (Dep't of Commerce); 18 C.F.R. § 1302.7(d) (Tenn. Valley Auth.); 18 C.F.R. § 705.7(e) (Water Resources Council); 22 C.F.R. § 141.6(e) (Dep't of State); 22 C.F.R. § 209.7(e) (Agency for Int'l Dev.); 24 C.F.R. § 1.7(e) (Dep't of Hous. & Urban Dev.); 29 C.F.R. § 31.7(e) (Dep't of Labor); 32 C.F.R. § 195.8(e) (Dep't of Defense); 34 C.F.R. § 100.7(e) (Dep't of Educ.); 38 C.F.R. § 18.7(e) (Dep't of Veterans Affairs); 40 C.F.R. § 7.100 (Env'tl. Prot. Agency); 41 C.F.R. § 101-6.210-5 (Gen. Servs. Admin.); 43 C.F.R. § 17.6(e) (Dep't of the Interior); 45 C.F.R. § 80.7(e) (Dep't of Health & Human Servs.); 45 C.F.R. § 1110.7(e) (Nat'l Found. on the Arts & Humanities); 45 C.F.R. § 1203.7(e) (Corp. for Nat'l & Cmty. Serv.); 45 C.F.R. § 611.7(e) (Nat'l Science Found.); 45 C.F.R. § 80.7(e) (Dep't of Health & Human Servs.); 49 C.F.R. § 21.11(e) (Dep't of Transp.). In addition, assurance documents from some agencies include a non-retaliation provision.

³ In *Peters*, the court limited the viability of a private suit for retaliation claim when the underlying allegation addresses unlawful disparate impact. According to *Peters*, a private individual cannot bring a retaliation claim under Title VI based on an underlying complaint of disparate impact. 327 F.3d at 319. DOJ disagrees. A recipient violates Title VI if it retaliates against a private individual who opposes a discriminatory action or participates in a matter alleging discrimination whether the underlying matter concerns intentional discrimination or disparate impact. As noted above, retaliation is a form of intentional discrimination, which Title VI clearly covers. *See Jackson*, 544 U.S. at 173-74 ("Retaliation is, by definition, an intentional act."). If a recipient intentionally takes an adverse action against an individual because he or she alleged that it violated Title VI, it should not matter whether the alleged violation raises an intent or disparate impact claim, particularly within the administrative setting. *Cf. id.* at 544 U.S. at 180 ("Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX's enforcement scheme would unravel.").

Moreover, and as discussed elsewhere in this manual, some courts have found that in certain circumstances, evidence of a disparate impact can also be evidence of intentional discrimination. *See Garcia ex rel. Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 436 F. Supp. 2d 1181, 1192 (D.N.M. 2006). The line between an intent and impact case is not always clear, particularly before the facts are gathered through discovery or an administrative investigation. In such cases, it may be impossible for an individual complainant to know, at the point of his or her complaint, whether a particular discriminatory effect is the result of a neutral policy or practice or was intentional. It is therefore entirely impractical to limit the retaliation protection to underlying intent claims.

It is well-settled that neither an agency nor a court need find that the underlying conduct about which the individual complained is discriminatory in order for the retaliation protection to attach. *Wyatt v. City of Boston*, 35 F.3d 13, 15 (1st Cir. 1994) (“[T]here is nothing [in the wording of the participation clause] requiring that the charges be valid, nor even an implied requirement that they be reasonable.”); *accord Ray v. Ropes & Gray LLP*, 961 F. Supp. 2d 344, 358 (D. Mass. 2013) (quoting *Wyatt*), *aff’d*, 799 F.3d 99 (1st Cir. 2015); *Slagle v. Cty. of Clarion*, 435 F.3d 262, 268 (3d Cir. 2006); *Brower v. Runyon*, 178 F.3d 1002, 1006 (8th Cir. 1999) (“The underlying charge need not be meritorious for related activity to be protected under the participation clause.”) (citing *Filipovic v. K & R Express Sys., Inc.*, 176 F.3d 390, 398 (7th Cir. 1999)).

Even if a private plaintiff could not file suit for retaliation for challenging disparate impact discrimination, a federal agency receiving a retaliation complaint would, nonetheless, have jurisdiction to pursue the retaliation claim.

1. Who May File a Retaliation Claim

A retaliation complaint can be filed by the individual who was the target of the recipient’s original allegedly discriminatory acts; a person whom the recipient has adversely treated for speaking out against the recipient’s allegedly discriminatory acts directed toward a member or members of a protected class; a person who participated in an investigation of alleged discrimination or in the complaint process itself. Title VI does not require that the retaliation victim also be the victim of the discrimination included in the original complaint or a member of the protected class. For example, the Supreme Court has held that an employer violated Title VII when it fired the fiancé of an employee who filed a sex discrimination complaint. *Thompson v. N. Am. Stainless*, 562 U.S. 170, 177 (2011). In finding that the plaintiff was an “aggrieved” party, the Court ruled that he fell within the “zone of interests” that the anti-retaliation provision intended to protect. *See also Jackson*, 544 U.S. at 179 (male coach who was retaliated against for complaining about sex discrimination against girl’s team had standing to sue for retaliation under Title IX although he was not the victim of the discrimination that was the subject of his original complaints); *Sullivan*, 396 U.S. at 237 (white person who was retaliated against for advocating

for the rights of a black person had standing to sue for retaliation); *Peters*, 327 F.3d at 316 (citing and quoting *Sullivan*); *Reinhardt v. Albuquerque Pub. Sch. Bd.*, 595 F.3d 1126, 1132 (10th Cir. 2010) (teacher advocated for student in Section 504 matter); *Kimmel v. Gallaudet Univ.* 639 F. Supp. 2d 34, 43 (D.D.C. 2009) (“advocacy on behalf of minority students is a protected activity sufficient to support a retaliation claim”). Retaliation protections thus are extended to those who oppose discrimination against others because otherwise individuals who witness discrimination might be reluctant to speak out against it.⁴

2. What Are the Elements of a Retaliation Claim?

If an investigative agency receives a claim of retaliation, the agency should consider whether the evidence establishes the court-developed elements of the claim. Under Title VI, the evidence must show that (1) an individual engaged in protected activity of which the recipient was aware; (2) the recipient took a significantly adverse action against the individual; and (3) a causal connection exists between the individual’s protected activity and the recipient’s adverse action. *See Peters*, 327 F.3d at 320; *Emeldi v. Univ. of Oregon*, 673 F.3d 1218, 1223 (9th Cir. 2012); *Palmer v. Penfield Cent. Sch. Dist.*, 918 F. Supp. 2d 192, 199 (W.D.N.Y. 2013); *Kimmel*, 639 F. Supp. 2d at 43; *Hickey v. Myers*, 852 F. Supp. 2d 257, 268 (N.D.N.Y. 2012); *Chandamuri*, 274 F. Supp. 2d at 84.

For there to be “protected activity,” the evidence must show that a person *opposed* a recipient’s actions that the person reasonably and in good faith believed violated Title VI or *participated* in a matter that reasonably or in good faith alleged a violation. *Peters*, 327 F.3d at 320-21; *Bigge v. Albertsons, Inc.*, 894 F.2d 1497, 1503 (11th Cir. 1990); *Kimmel*, 639 F. Supp. 2d at 43. Opposition or complaints can be oral or written. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 1336 (2011) (Congress intended anti-retaliation provisions to protect both oral and written complaints). The evidence does not have to establish that the underlying act violated Title VI, only that the complainant reasonably and in good faith believed that the acts were discriminatory. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 69-70 (2006); *Peters*, 327 F.3d at 321; *Manoharan v. Columbia Univ. Coll. of Physicians & Surgeons*, 842 F.2d 590, 593 (2d Cir. 1988) (“plaintiff must demonstrate a ‘good faith, reasonable belief that the underlying challenged actions of the employer violated the law.’”).

For a Title VI retaliation claim, an adverse action is an action that would deter a reasonable person from bringing or supporting a charge of discrimination. *See, e.g., Jackson*, 544 U.S. at 179 (giving coach negative evaluations and firing him as a coach was sufficient evidence of

⁴ In *Crawford v. Metropolitan Government of Nashville & Davidson County*, 555 U.S. 271, 277-78 (2009), the Court ruled that anti-retaliation protection also extends to an employee cooperating with an internal employer investigation of a discrimination complaint: “[N]othing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question.”

adverse action); *Burlington*, 548 U.S. at 68, 70 (reassigning employee to a less desirable job and suspending her for 37 days without pay after she complained about work conditions constitutes adverse action); *Palmer*, 918 F. Supp. 2d at 199 (denial of tenure constitutes adverse action). The evidence must show that the actions the recipient took against the complainant were more than trivial harms, minor annoyances, or petty slights. *Burlington*, 548 U.S. at 68; *Morales v. N.Y. Dep't of Labor*, 865 F. Supp. 2d 220, 256 (N.D.N.Y. 2012) (plaintiff alleged only “petty slights”), *aff'd*, 530 Fed. App'x 13 (2d Cir. 2013). An agency should decide what constitutes an adverse action case-by-case, taking into consideration contextual factors or specific circumstances. *See Burlington*, 548 U.S. at 69; *Gupta v. Fla. Bd. of Regents*, 212 F.3d 571, 587 (11th Cir. 2000).

Lastly, the evidence must show that the protected activity was the likely reason for the recipient's adverse action. The focus here is on determining whether there is a causal connection between the complainant's protected activity and the recipient's alleged adverse action.

A complainant or agency could establish retaliation under one of two methods. Under the first, the direct method of proof, complainants must “offer evidence that [they] engaged in a statutorily protected activity, that the defendants subjected [them] to an adverse employment action, and that a causal connection exists between the two events.” *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 686 (7th Cir. 2008) (citing *Treadwell v. Office of Ill. Sec'y of State*, 455 F.3d 778, 781 (7th Cir. 2006)). Under this evidence method, a plaintiff must present evidence of discriminatory intent that does not require support from inferences.

The second method, indirect proof, involves use of circumstantial evidence that the individual's protected activity led to an alleged adverse action, either wholly or in part, in response to the individual's protected conduct. Temporal proximity between the complainant's protected activity and the recipient's adverse actions often is relevant to a determination of causation. *See, e.g., Loudermilk v. Best Pallet Co.*, 636 F.3d 312, 315 (7th Cir. 2011) (“an adverse action [that] comes so close on the heels of a protected act that an inference of causation is sensible”); *Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir. 1997) (“the timing of the alleged retaliatory action must be ‘unusually suggestive’ of retaliatory motive before a causal link will be inferred.”); *Palmer*, 918 F. Supp. 2d at 199 (allegation that denial of tenure “swiftly followed” complaint about discrimination supported claim of retaliation). There is no bright line rule, however; “the answer depends on context,” *Loudermilk*, 636 F.3d at 315; and temporal proximity is not dispositive. *See, e.g., Robinson v. Southeastern Pa. Transp. Auth.*, 982 F.2d 892, 894 (3d Cir. 1993) (“mere passage of time is not legally conclusive proof against retaliation.”). “When temporal proximity between protected activity and allegedly retaliatory conduct is missing, courts may look to the intervening period for other evidence of retaliatory animus.” *Krouse*, 126 F.3d at 503-04.

3. Third-party retaliation

Finally, under certain circumstances, Title VI's prohibition on retaliation extends to third parties, which may include lower-level recipient employees, program beneficiaries or participants, organizations with a relationship to the recipient such as contractors, and others. Agency Title VI regulations provide that "[n]o recipient or *other* person" may retaliate. *See, e.g.*, 28 C.F.R. § 42.107(e) (Department of Justice); 34 C.F.R. § 100.7(e) (Department of Education) (emphasis added). Recipients have two key obligations related to third party retaliation: first, to protect individuals from potential retaliation, recipients are obligated to keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the Title VI regulations, including conducting investigations, hearings, or judicial proceedings; and second, recipients must investigate and respond when a third party engages in retaliatory conduct that Title VI prohibits. As with other types of third party conduct, such as harassment, the extent of the recipient's obligation is tied to the level of control it has over the bad actor and the environment in which the bad acts occurred. *See Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 644 (1999). Agencies should make this determination case-by-case. For example, universities are required to investigate and respond adequately to retaliatory conduct by their students. *See, e.g.*, Departments of Education and Justice letter resolving DOJ Case No. DJ 169-44-9, OCR Case No. 10126001 (May 9, 2013).⁵

⁵ The letter is available here: <https://perma.cc/2GAC-Y3YK>.

IX. PRIVATE RIGHTS OF ACTION AND INDIVIDUAL RELIEF THROUGH AGENCY ACTION**A. Private Right of Action**

The Supreme Court has established “an implied private right of action” under Title VI, leaving it “beyond dispute that private individuals may sue” to address allegations of intentional discrimination. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001)). The Court previously has stated that it had “no doubt that Congress ... understood Title VI as authorizing an implied private cause of action for victims of illegal discrimination.” *Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979) (holding that an individual has a private right of action under Title IX). In *Sandoval*, 532 U.S. at 284-85, the Supreme Court explained that the private right of action under Title VI exists only under Section 601, for cases of intentional discrimination. The Court held that individuals do not have a private right of action to enforce the discriminatory effects regulations implementing Section 602, because “[n]either as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under § 602.” *Id.* at 293.

In *Sandoval*, the Court posited that if Congress intended for Section 602 to be enforced through a private cause of action, it would have to create an express individual right under that Section. *Id.* at 286-87. Looking at Title VI’s explicit language, the Court ruled that Section 601 only prohibits intentional discrimination, and the “authorizing portion of § 602 reveals no congressional intent to create a private right of action.” *Id.* at 289.¹ Section 602, unlike Section 601, is focused on regulating the funded entity, not providing rights to individuals. *Id.* The Supreme Court held that “[s]tatutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” *Id.* (quoting *California v. Sierra Club*, 451 U.S. 287, 294 (1981)). As a result, “*Sandoval* held that private parties may not invoke Title VI regulations to obtain redress for disparate-impact discrimination because Title VI itself prohibits only intentional discrimination.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 178 (2005).²

¹ The *Sandoval* Court stated:

Whereas § 601 decrees that “[n]o person ... shall ... be subjected to discrimination,” 42 U.S.C. § 2000d, the text of § 602 provides that “[e]ach Federal department and agency ... is authorized and directed to effectuate the provisions of [§ 601],” 42 U.S.C. § 2000d-1. Far from displaying congressional intent to create new rights, § 602 limits agencies to “effectuat[ing]” rights already created by § 601. And the focus of § 602 is twice removed from the individuals who will ultimately benefit from Title VI’s protection.

Sandoval, 532 U.S. at 288-89.

² Following the Court’s *Sandoval* decision, the Civil Rights Division made clear that federal agencies retained the right to address and remedy disparate impact discrimination. See Civil Rights Division, *Memorandum for Heads of Departments and Agencies General Counsels and Civil Rights Directors, Executive Order 13166 (Improving Access*

The Supreme Court's *Sandoval* decision left open the question whether an individual may bring an action under 42 U.S.C. § 1983 to enforce Section 602 regulations. *Sandoval*, 532 U.S. at 300–01 (Stevens, J., dissenting). A year later, the Supreme Court answered this question in a case brought under Section 1983 to enforce the Family Educational Rights and Privacy Act (FERPA), finding that there is no private cause of action via Section 1983. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002). The issue before the Court was whether a plaintiff could bring an action under Section 1983 to enforce FERPA, even though FERPA created no private right of action. *Id.* The Supreme Court explained that there is no private right of action: “We have held that ‘[t]he question whether Congress . . . intended to create a private right of action [is] definitively answered in the negative’ where a statute by its terms grants no private rights to any identifiable class.” *Id.* at 283–84 (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 576 (1979)). Following *Sandoval* and *Gonzaga*, a majority of circuits have held that where a statute does not confer a private enforceable right, regulations promulgated under the statute cannot create a private right of action.³ Therefore, the regulations promulgated under Section 602 are unenforceable via a private action under Section 1983.

The private right of action under Section 601 for intentional discrimination cannot be brought against individuals except in their official capacity. *Wood v. Yordy*, 753 F.3d 899, 903, 904 (9th Cir. 2014) (finding, consistent with the 3rd, 4th, 7th, and 10th Circuits, that Spending Clause statutes do “not authorize suits against a person in anything other than an official or governmental capacity”); *see also Price ex rel. Price v. La. Dep’t of Educ.*, 329 F. App’x 559, 561 (5th Cir. 2009) (“[O]nly public and private entities can be held liable under Title VI.”); *Shotz v. City of Plantation*, 344 F.3d 1161, 1171 (11th Cir. 2003) (“It is beyond question . . . that individuals are not liable under Title VI”) (footnote omitted); *Mwabira-Simera v. Howard Univ.*, 692 F. Supp. 2d 65, 70 (D.D.C. 2010) (“[N]one of the individual defendants is subject to suit under [Title VI]”).

Generally, Title VI does not provide a cause of action for private plaintiffs to sue the federal government directly or to address an allegation that the government has failed to perform its Title VI responsibilities.⁴ *See Maloney v. Soc. Sec. Admin.*, 517 F.3d 70, 75–76 (2d Cir. 2008) (concluding “that, as with Title VI, the Age Discrimination Act does not apply to a federal agency implementing a federal program”); *Jersey Heights Neighborhood Ass’n v. Glendening*,

to Services for Persons with Limited English Proficiency), (Oct. 26, 2001), <http://www.justice.gov/crt/about/cor/lep/Oct26Memorandum.php> (last visited Apr. 12, 2016).

³ *See, e.g., Caswell v. City of Detroit Hous. Comm’n*, 418 F.3d 615, 618–20 (6th Cir. 2005) (Section 1983); *Three Rivers Ctr. for Indep. Living v. Hous. Auth. of City of Pittsburgh*, 382 F.3d 412, 423–25 (3d Cir. 2004) (Section 1983 and Section 504); *Save Our Valley v. Sound Transit*, 335 F.3d 932, 936–39 (9th Cir. 2003) (Section 1983).

⁴ There may be other causes of action available to private plaintiffs seeking to challenge a federal agency’s administration of its responsibilities under Title VI, such as the Administrative Procedures Act. This section addresses only claims brought under Title VI.

174 F.3d 180, 191 (4th Cir. 1999) (Title VI does not provide a cause of action against the United States); *Wash. Legal Found. v. Alexander*, 984 F.2d 483, 487-88 (D.C. Cir. 1993); *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 750 (D.C. Cir. 1990) [hereinafter *WEAL II*]; *Cottrell v. Vilsack*, 915 F. Supp. 2d 81, 91 (D.D.C.) (finding a nondiscrimination provision in a federal funding statute does not apply to programs “that are conducted directly by a federal agency”), *aff'd*, 2013 WL 4711683 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 1553 (2014).

In *Jersey Heights*, African-American landowners filed suit against the U.S. Department of Transportation, among others, claiming that it abdicated its duties under Section 602 by not terminating funding to a recipient not in compliance with Title VI. *Jersey Heights*, 174 F.3d at 191. The Fourth Circuit found that Title VI provides two avenues of recourse to address discrimination: private right of action against recipients and petition or complaint to the federal funding agency to secure voluntary compliance by its recipients. *Id.* After reviewing Title VI's legislative history, the court concluded that Congress did not intend for aggrieved parties “to circumvent that very administrative scheme through direct litigation against federal agencies.” *Id.*

Similarly, the court in *WEAL II* ruled that, absent congressional authorization, individuals do not have a private right of action under Title VI, Title IX, or Section 504 against the federal government for failing to enforce those statutes against its funding recipients.⁵ *WEAL II*, 906 F.2d at 748-50.

1. Injunctive Relief⁶

The most common form of relief sought and obtained through a Title VI private right of action is an injunction ordering a recipient to do or to stop doing something. *See, e.g., Sandoval*, 532 U.S. at 279 (“[P]rivate individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages.”).⁷ To obtain a permanent injunction, the moving party must demonstrate:

⁵ The *WEAL II* decision brought to a close the twenty-year history of litigation that began in 1970 alleging that the Department of Health, Education, and Welfare failed adequately to enforce Title VI. *See Adams v. Richardson*, 356 F. Supp. 92 (D.D.C. 1973).

⁶ The availability of remedies may depend on the timing of an entity's receipt of federal financial assistance. Past funding alone may not support prospective relief such as an injunction, but it may support a claim for backward-looking relief, such as back pay, restitution, or damages. *See Huber v. Howard Cty.*, 849 F. Supp. 407, 415 (D. Md. 1994) (Section 504 matter, finding that the recipient received federal financial assistance during the time of plaintiff's employment and discharge); *James v. Jones*, 148 F.R.D. 196, 201 (W.D. Ky. 1993) (state “does not presently receive [federal] funds, but ... has appealed its suspension from the program and it maintains its hope of receiving future funds”).

⁷ Not all monetary relief is automatically treated as compensatory or punitive in nature by the courts. In some instances monetary relief is equitable in nature and therefore may not require proof of intentional discrimination. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-18 (1975)

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, L.L. C., 547 U.S. 388, 391 (2010); *see also Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 422-23 (2d Cir. 2013).

The factors for a preliminary injunction vary by circuit, but are similar to those considered for a permanent injunction. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (moving party must show “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest”); *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 188 (4th Cir. 2013); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012); *In re Navy Chaplaincy*, 697 F.3d 1171, 1178 (D.C. Cir. 2012); *EEOC v. KarenKim, Inc.*, 698 F.3d 92, 100 (2d Cir. 2012).

2. Monetary Damages for Intentional Discrimination⁸

The law is well-settled that private individuals may obtain monetary damages for claims of intentional discrimination under Section 601 of Title VI. *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 272 (3d Cir. 2014); *Yakin v. Univ. of Ill.*, 508 F. Supp. 848, 852 (N.D. Ill. 1981), *aff’d*, 760 F.2d 270 (7th Cir. 1985).

Throughout its opinion in *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992), a case brought under Title IX, the Supreme Court broadly referred to the relief being sanctioned as “monetary damages” or “monetary awards.” *Id.* at 74-76. Although the Court did not define these terms, it specifically rejected limiting Title IX plaintiffs to monetary relief that is equitable in nature, such as backpay. *See id.* at 75-76. In these circumstances, a recipient of federal funds is “subject to suit for compensatory damages,” *Barnes v. Gorman*, 536 U.S. 181, 186–87 (2002), which traditionally includes damages for both pecuniary and nonpecuniary injuries.⁹

⁸ As discussed in Section VIII, retaliation is a form of intentional discrimination. A person proving retaliation thus would be entitled to compensatory damages on the same basis as a person alleging a violation involving one of the specifically identified bases.

⁹ Section 903 of the Restatement (Second) of Torts (1979) defines “compensatory damages” as “the damages awarded to a person as compensation, indemnity or restitution for harm sustained.” *See also Pro-Pac, Inc. v. WOW Logistics Co.*, 721 F.3d 781, 788 (7th Cir. 2013) (quoting Section 903). ‘Non-pecuniary’ compensatory damages include “compensation for bodily harm and emotional distress . . .” Restatement (Second) of Torts §§ 905-906; *Barati v. Metro-N. R.R.*, 939 F. Supp. 2d 143, 151 (D. Conn. 2013) (quoting Sections 904–906). Section 904 states that damages for nonpecuniary harm include damages for bodily harm and emotional distress. *See generally id.*, §§ 901-932.

Similarly, in *Barnes*, the Supreme Court has held that individuals may obtain monetary damages from recipients for claims of intentional discrimination under Title IX. *Barnes*, 536 U.S. at 186-87 (citing *Franklin v. Gwinett*, 503 U.S. 60, 74-75 (1990));¹⁰ *Sandoval*, 532 U.S. at 282-83 (“In *Guardians*, the Court held that private individuals could not recover compensatory damages under Title VI except for intentional discrimination.”) (citing *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 611 n.5 (1983) (Powell, J., concurring in judgment)); *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 630-31 (1984).

Courts applying *Barnes* and *Franklin* generally have interpreted these decisions to permit the award of the full range of compensatory damages, including damages for emotional distress, as available remedies under Spending Clause legislation. *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1198-1204 (11th Cir. 2007) (discussing *Barnes* and *Franklin* and concluding that emotional damages are a form of compensatory damages available for intentional discrimination claims); *Tyler v. City of Manhattan*, 118 F.3d 1400, 1409-14 (10th Cir. 1997) (collecting cases, analyzing *Franklin*, and concluding that compensatory damages, including emotional distress, are appropriate remedies); *Doe v. District of Columbia*, 796 F. Supp. 559, 571 (D.D.C. 1992) (finding compensatory damages are available under Section 504); *Dawn L. v. Greater Johnstown Sch. Dist.*, 586 F. Supp. 2d 332, 383-84 (W.D. Pa. 2008) (concluding emotional distress damages are available under Title IX); *see also DeLeo v. City of Stamford*, 919 F. Supp. 70 (D. Conn. 1995) (citing cases equating monetary damages with compensatory damages).

Punitive damages are not an available remedy. In *Barnes*, 536 U.S. at 189, the Court explained:

When a federal-funds recipient violates conditions of Spending Clause legislation, the wrong done is the failure to provide what the contractual obligation requires; and that wrong is “made good” when the recipient *compensates* the Federal Government or a third-party beneficiary (as in this case) for the loss caused by that failure.

The Court also stated that recipients generally are not on notice that they may be subject to a recovery of punitive damages and, more significantly, likely would not seek or agree to receiving federal financial assistance if punitive damages were available. *Id.* at 188 (“Not only is it doubtful that funding recipients would have agreed to exposure to such unorthodox and indeterminate liability; it is doubtful whether they would even have *accepted the funding* if punitive damages liability was a required condition.”) (emphasis in original); *see also Moreno v. Consol. Rail Corp.*, 99 F.3d 782, 790-92 (6th Cir. 1996) (collecting cases).

¹⁰ The Court stated, “absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.” *Franklin*, 503 U.S. at 70-71.

3. Availability of Individual Monetary Damages through Agency Action

Compensatory damages are also an available remedy in agency administrative compliance activities. However, compensatory damages are generally unavailable for claims based solely on an agency's disparate impact regulations. *Sandoval*, 532 U.S. at 282–83; *Barnes*, 536 U.S. at 187. The Supreme Court has stated, “where discrimination is unintentional, ‘it is surely not obvious that the grantee was aware that it was administering the program in violation of the [condition].’” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998) (quoting *Guardians*, 463 U.S. at 598). In *Franklin*, the Court explained, “[t]he point of not permitting monetary damages for an unintentional violation is that the receiving entity of federal funds lacks notice that it will be liable for a monetary award.” *Franklin*, 503 U.S. at 74 (citing *Pennhurst State Sch. and Hosp. v. Halderman*, 451 US 1, 17 (1981)); *See also Davis*, 526 U.S. at 640; *Guardians*, 463 U.S. at 598.¹¹

4. No Administrative Exhaustion Requirement

There is no requirement that a plaintiff exhaust administrative remedies prior to bringing a private Title VI civil action. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) (“Title IX has no administrative exhaustion requirement.... Plaintiffs can file directly in court under its implied private right of action and can obtain the full range of remedies.”); *Cannon*, 441 U.S. at 706-07 n.41 (“[W]e are not persuaded that individual suits are inappropriate in advance of exhaustion of administrative remedies.”).¹² Though *Fitzgerald* and *Cannon* addressed Title IX, courts have applied the same analysis to Title VI and Section 504 claims and held that litigants need not exhaust administrative remedies prior to bringing a Title VI claim in federal court. *See, e.g., Wade v. Knoxville Util. Bd.*, 259 F.3d 452, 460 (6th Cir. 2001) (“[P]laintiff was not required to exhaust administrative remedies before bringing a Title VI claim”). First, “nothing in the language of [] Title VI requires administrative exhaustion.” *Freed v. Consol.*

¹¹ *See also Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009) (Section 504 permits “all remedies available under Title VI of the Civil Rights Act of 1964, including monetary damages. However, monetary damages are recoverable only upon a showing of an *intentional* violation.”) (citation omitted); *Horner v. Ky. High Sch. Athletic Ass’n*, 206 F.3d 685, 690 (6th Cir. 2000) (requiring proof of intentional discrimination to obtain monetary damages under Title IX where facially neutral policy is challenged because of its disparate impact); *Davoll v. Webb*, 194 F.3d 1116, 1142 (10th Cir. 1999) (“[S]tatutes enacted by Congress pursuant to its spending power should not expose funding recipients to compensatory damages liability for unintentional violations.”); *Ferguson v. City of Phoenix*, 157 F.3d 668, 674 (9th Cir. 1998) (compensatory damages are not available under Section 504 absent a showing of discriminatory intent); *Wood v. President & Trustees of Spring Hill Coll.*, 978 F.2d 1214, 1219-20 (11th Cir. 1992) (compensatory damages are not available absent proof of intent under Section 504); *Carter v. Orleans Parish Pub. Schs.*, 725 F.2d 261, 264 (5th Cir. 1984) (finding compensatory damages are not available for unintentional violations of the Rehabilitation Act).

¹² *See also Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 919 (7th Cir. 2012) (finding Title IX claimants “need not exhaust administrative remedies before bringing suit directly in court”); *Brennan v. King*, 139 F.3d 258, 268 n.12 (1st Cir. 1998) (“[Section 504] derives its procedural requirements from Title VI, which does not have an exhaustion requirement.”); *Kling v. Los Angeles County*, 633 F.2d 876, 879 (9th Cir. 1980) (concluding “the exhaustion of Title IX administrative remedies is not required before one files a private action”).

Rail Corp., 201 F.3d 188, 194 (3d Cir. 2000). Second, as the Court noted in *Cannon*, “[t]he award of individual relief to a private litigant who has prosecuted her own suit is not only sensible but is also fully consistent with—and in some cases even necessary to—the orderly enforcement of the statute.” *Cannon*, 441 U.S. at 705-06.

B. States Do Not Have Eleventh Amendment Immunity under Title VI

The Eleventh Amendment reflects a broad principle of sovereign immunity.¹³ Since 1890, the Supreme Court consistently has held that this Amendment protects a state from being sued in federal court without the state’s consent. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 n.7 (1996) (citing cases). However, federal courts have jurisdiction over a state if the state has either waived its immunity or Congress has abrogated unequivocally a state’s immunity pursuant to valid powers. *See id.* at 68. Congress has unequivocally done so with respect to Title VI and related statutes.

In 1986, Congress enacted 42 U.S.C. § 2000d-7 as part of the Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, Tit. X, § 1003, 100 Stat. 1845 (1986), to abrogate states’ immunity from suit for violations of Section 504, Title VI, Title IX, the Age Discrimination Act, and similar nondiscrimination statutes. *See Sossamon v. Texas*, 131 S. Ct. 1651, 1662 (2011); *Sandoval*, 532 U.S. at 280; *Lane v. Peña*, 518 U.S. 187, 199 (1996). Section 2000d-7(a) states:

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ... title VI of the Civil Rights Act of 1964, ... or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

42 U.S.C. § 2000d-7 (internal citations omitted). Section 2000d-7 is an unambiguous abrogation that gives states express notice that a condition for receiving federal funds is the requirement that they consent to suit in federal court for alleged violations of Title VI and the other statutes enumerated. *Sossamon*, 131 S. Ct. at 1662.

¹³ U.S. Const. Amend. XI states: “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State.” *See Hans v. Louisiana*, 134 U.S. 1 (1890).

X: EMPLOYMENT COVERAGE

A. Scope of Coverage

Title VI prohibits recipients, most of which are employers, from discriminating based on race, color, and national origin. Congress, however, did not intend Title VI to be the primary federal vehicle to prohibit employment discrimination.¹ It does forbid recipients from discriminating in employment in certain situations. Specifically, if “a primary objective” of the federal financial assistance to a recipient is to provide employment, then the recipient’s employment practices are subject to Title VI. 42 U.S.C. § 2000d-3. In addition, a recipient’s employment practices also are subject to Title VI where those practices negatively affect the delivery of services to ultimate beneficiaries.

An illustration of the Title VI “primary objective” analysis is as follows: If a recipient builds a temporary shelter with funds designed to provide assistance to dislocated individuals, the employment practices of the recipient with respect to the construction of the facility would not be subject to Title VI. However, if the recipient builds the same facility with funds received through a public works program whose primary objective is to generate employment, the employment practices would be subject to Title VI. In the former case, the program’s benefit was to provide shelter to dislocated individuals, while in the latter, the benefit was the employment of individuals to build the facility.

One important factor in determining the reach of the employment provision of Title VI is the clear congressional intent that Title VI not “impinge” on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. *Johnson v. Transp. Agency*, 480 U.S. 616, 628 n.6 (1987). Title VII prohibits employment discrimination based on race, color, national origin, religion, and sex. Title VII covers employers with 15 or more employees. To sustain a Title VI claim of employment discrimination under the exception for “a primary objective,” the plaintiff has a specific threshold requirement: not only must the plaintiff establish that the recipient receives federal financial assistance, but also that a “primary objective” of the federal funding is to provide employment. *Middlebrooks v. Godwin Corp.*, 722 F. Supp. 2d 82, 91-92 (D.D.C. 2010); *Reynolds v. School Dist. No. 1, Denver*, 69 F.3d 1523, 1531 (10th Cir. 1995) (motion to

¹ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, is the primary vehicle that Congress established to address employment discrimination. Under Title VII, employers with 15 or more employees are prohibited from discriminating based on race, color, national origin, religion, and sex. When Congress enacted Title VI, it made clear its limited reach with respect to employment:

Nothing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

dismiss granted where plaintiff failed to show that a primary purpose of federal assistance was to provide employment); *Ass'n Against Discrimination in Emp't v. City of Bridgeport*, 647 F.2d 256, 276 (2d Cir. 1981) (plaintiff failed to prove all elements of employment discrimination claim because of lack of evidence of primary purpose of federal funds); *Bass v. Bd. of Cty. Comm'rs*, 38 F. Supp. 2d 1001, 1009 (M.D. Fla. 1999) (summary judgment against plaintiff because of lack of evidence of primary purpose of federal funds); *Thornton v. Nat'l R.R. Passenger Corp.*, 16 F. Supp. 2d 5, 7 (D.D.C. 1998) (complaint dismissed because funding transportation was the primary objective of funding, not employment). In *Reynolds*, the plaintiff's assertion that federal funds paid, in part, the salary of an employee was insufficient, because the plaintiff did not show that a primary objective of the federal funds was employment rather than general funding of school programs. *Id.* at 1532.²

By contrast, in *Rogers v. Board of Education*, 859 F. Supp. 2d 742, 744 (D. Md. 2012), the court noted that Maryland public schools “received more than \$1 billion through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111–5, 123 Stat. 115, and that the [defendant public school system] received such funds ‘for the express purpose of creating jobs and maintaining existing ones.’” The court observed that “[t]he statute is clear that this objective need not be exclusive [and that] providing employment need only be a primary goal” *Rogers*, 859 F. Supp. 2d at 751. Although the defendant conceded that it received ARRA and other funds that targeted employment, the school board argued that it did not use these funds for employment. The court denied the defendant's motion for summary judgment on this issue because it determined that the issue was in dispute.³

Further, where a recipient's employment discrimination has a secondary effect on the ability of beneficiaries to participate meaningfully in and/or receive the benefits of a federally assisted program in a nondiscriminatory manner, those employment practices are within the purview of Title VI.⁴ Agency regulations specifically address this principle in identical or similar language:

² Cases involving staff privileges at hospitals have led to some apparent inconsistency. As one commenter noted,

Courts have not been uniform in their handling of staff privileging cases brought under Title VI The cases turn on the question of whether a physician is an intended beneficiary of Title VI protections. Where courts find there is no nexus between the allegedly discriminatory practice and the use of federal funds, physician claims have failed This “primary objective” exception makes the distinction between employee and non-employee physicians in staff privileging cases important. If physicians are employees of the health care defendant, then there is no colorable Title VI discrimination claim. However, where physicians are independent contractors, a Title VI claim may survive.

Dayna Bowen Matthew, *A New Strategy To Combat Racial Inequality in American Health Care Delivery*, 9 DePaul J. Health Care L. 793, 815-16 (2005).

³ Subsequently, the court dismissed the plaintiff's harassment complaint, finding that she failed to show that she was the victim of severe or pervasive offending conduct. *Rogers v. Bd. of Educ.*, No. 8:11–CV–01194–PJM (D. Md. July 27, 2012), *aff'd*, 508 Fed.App'x 258 (4th Cir. 2013).

⁴ This is oftentimes referred to as the “infection theory.”

In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) [prohibitions where objective is employment] apply to the employment practices of the recipient if discrimination on the grounds of race, color, or national origin in such employment practices tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this Section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

28 C.F.R. § 42.104(c)(2) (DOJ); *see also* 15 C.F.R. § 8.4(c)(2) (Dep't of Commerce); 34 C.F.R. § 100.3(c)(3) (Dep't of Education). In this situation, there is a causal nexus between employment discrimination and discrimination against beneficiaries; that is, the employment discrimination infects the beneficiaries' entitlement of the recipient's services, programs, and activities. *United States v. Jefferson Cty. Bd. of Educ.*, 372 F.2d 836, 883 (5th Cir. 1966) ("faculty integration is essential to student desegregation"); *Ahern v. Bd. of Educ.*, 133 F.3d 975, 983-84 (7th Cir. 1998) (applying infection theory to public school plan for assignment of principals); *Caulfield v. Bd. of Educ.*, 486 F. Supp. 862, 876 (E.D.N.Y. 1979) (characterization of infection theory where employment practices affect beneficiaries, i.e., students); *Marable v. Ala. Mental Health Bd.*, 297 F. Supp. 291, 297 (M.D. Ala. 1969) (patients of state mental health system have standing to challenge segregated employment practices which affect delivery of services to patients.).

Section 2000d-3 only limits Title VI's employment coverage. It does not exempt a recipient's employment practices from other applicable federal statutes, executive orders, or regulations. *United States ex rel. Clark v. Frazer*, 297 F. Supp. 319, 322 (M.D. Ala. 1968); *see also Contractors Ass'n of E. Pa. v. Sec'y of Labor*, 442 F.2d 159, 173 (3d Cir. 1971). Furthermore, a recipient's compliance with state and local merit systems for employment may not necessarily constitute compliance with Title VI. *See, e.g.*, 28 C.F.R. § 42.409.

B. Regulatory Referral of Employment Complaints to EEOC

In 1983, DOJ and the Equal Employment Opportunity Commission published "Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance." 28 C.F.R. §§ 42.601 – 42.613 (DOJ); 29 C.F.R. §§ 1691.1 – 1691.13 (EEOC) (often referred to as the Title VI/VII rule). The purpose of the regulation is simple: to reduce "duplicative investigations by various Federal agencies of similar complaints of employment discrimination against an employer."

48 Fed. Reg. 3570, 3670 (1983).⁵ The regulation further noted that by placing the primary responsibility for addressing employment discrimination with the EEOC, “agencies will be able to focus their efforts on possible instances of systemic employment discrimination or discrimination in the provision of services to beneficiaries of Federally assisted programs.” *Id.*

In summary, and as a general rule, the procedures provide that a federal agency receiving a complaint of employment discrimination against a recipient covered by both Title VI (and/or other grant-related prohibitions against discrimination) and Title VII may (and generally does) refer the complaint to the EEOC for investigation and conciliation. *Id.* §§ 42.605(d), 42.609.⁶ If the EEOC finds discrimination and is unable to resolve the complaint, the rule calls for the funding agency to evaluate the matter, with “due weight to EEOC’s determination that reasonable cause exists,” and to take appropriate enforcement action. *Id.* § 42.610. Where a complaint alleges a pattern or practice of discrimination and there is dual coverage, agencies have the option of keeping the complaint rather than referring it.⁷

⁵ As of the date of this Manual, the EEOC has indicated that it intends to review and revise the joint regulation. The EEOC has not yet issued a Notice of Proposed Rulemaking on this matter but has included it in the Unified Agenda. *See* OMB/OIRA Unified Agenda, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=3046-AA93> (last visited Oct. 14, 2016).

⁶ If the complaint only alleges a violation of Title VII and not Title VI, the matter should be transferred to the EEOC. In addition, the regulation exempts from its application Executive Order 11246, which the Department of Labor’s Office of Federal Contracts Compliance Programs enforces. Similarly, the nondiscrimination provisions in the Omnibus Crime Control and Safe Streets Act, as amended, and the Juvenile Justice and Delinquency Prevention Act are not limited as to coverage of employment discrimination. *See* 28 C.F.R. § 42.601.

⁷ For example, the Office for Civil Rights (OCR) at the Department of Education generally does not refer such complaints to the EEOC if OCR has jurisdiction and the complaint alleges a pattern or practice of employment discrimination or the complaint also alleges discrimination in other practices of the recipient. *See* OCR Case Processing Manual, Article VI, Section 601 (Special Intake Procedures), (c) Title VI and Title IX Employment Complaints.

Exhibit 62



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Shuttered EPA investigation could've brought 'meaningful reform' in Cancer Alley, documents show



The Marathon Petroleum Refinery is visible in Reserve, La., Thursday, Dec. 2, 2021. Environmental advocates and residents of the Louisiana chemical corridor known as Cancer Alley have spent decades calling for change in the way industrial activity is regulated there. The EPA and the Louisiana environmental agency spent months negotiating an agreement that would have fundamentally changed the state's air pollution permitting program. It ultimately fell apart without an agreement. (AP Photo/Gerald Herbert, File)

Photos 1

BY HALLE PARKER AND WWNO

Updated 7:54 AM MST, September 6, 2023

NEW ORLEANS (AP) — As industrial plants have overtaken historic Black communities and burdened neighborhoods with toxic air pollution, environmental advocates and residents of Louisiana's chemical corridor have spent decades calling for change.

So when the country's top environmental regulator opened a high-profile civil rights investigation into Louisiana's Department of Environmental Quality last year, it felt like a watershed moment.

For the first time, the Environmental Protection Agency stepped in to exercise its oversight and evaluate whether LDEQ has granted permits for companies to build and pollute in a way that has caused disproportionate harm to Black communities. Ultimately, they found signs that it has.

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After pledging to clean up Cancer Alley — the nickname for the heavily industrialized, 85-mile stretch of the Mississippi River between Baton Rouge and New Orleans — the EPA issued a letter in October 2022 detailing preliminary evidence of racial discrimination and noncompliance by the state.

OTHER NEWS



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Advocates like Lisa Jordan, who leads the Tulane Environmental Law Clinic, and the clients she represents were cautiously optimistic.

"We dared to hope," said Jordan, who filed one of the complaints that led to EPA's civil rights investigation.

The EPA's findings brought LDEQ to the negotiating table. [Documents and emails newly uncovered by WWNO and WRKF](#) show that staff from the two agencies spent months negotiating a 43-page agreement that would have fundamentally changed Louisiana's air pollution permitting program so that state regulators would have no longer allowed toxic emissions to disproportionately impact certain communities. While the EPA's civil rights investigation could have led to a consent decree that forced LDEQ to change, this voluntary agreement offered a path to reform without punishment.

But, in late June, it all came to a grinding halt.

The EPA abruptly closed the case and ended discussions with the LDEQ, stopping its investigation without coming to a resolution or releasing its findings. The decision blindsided the River Parish residents who took part in the complaints.

"We'd been out here fighting so hard for so long, it felt good to have someone shouldering the burden with us, and it felt good to not be gaslit," said Joy Banner, a St. John the Baptist Parish resident and cofounder of the Descendants Project, in the weeks after. "After all of that fighting, they just abandoned us."

WWNO/WRKF's reporting reveals for the first time the fullest details of the draft agreement and offers a window into how negotiations between the two agencies unraveled. With Louisiana's attorney general now suing the EPA, environmental justice experts and advocates fear that the breakdown could mark the beginning of a major attack on a core aspect of the Civil Rights Act.

‘MEANINGFUL REFORM’

In the month before negotiations ended, LDEQ and EPA staff closed in on an agreement. They exchanged a draft resolution on May 18 that would have ingrained sweeping new procedures for the state to ensure that future permitting decisions included an in-depth analysis into whether the adverse impacts of any new polluting facility would be disproportionately felt by people of a certain race, color or nationality — an outcome also known as “disparate impact.”

Had the agreement been finalized, Louisiana environmental advocates would also have received another major win: LDEQ would have begun studying how a proposed facility would add to a community’s cumulative burdens. For each permit application, the agency would be required to look at the local area’s current exposure to air pollutants as well as how different social or health factors could leave the community vulnerable to harmful effects.

Deep South Center for Environmental Justice Director of Law and Policy Monique Harden, who has more than two decades of law experience, reviewed the May 18 draft of the informal resolution agreement, saying it would have led to “meaningful reform” of the state agency. She wasn’t involved in any of the complaints the EPA investigated.

Most significantly, the agreement would have enforced the state’s legal obligation to request companies look at alternate sites or even deny a permit to lessen any disparate impacts found during its newly robust analysis.

“You can consider, through mapping and statistical data collection and analysis, environmental justice. You can do that all day long and not have any change on the ground for Black communities,” Harden said. “Consideration is weak sauce. We need permit denials. We need reductions in pollution. We need mitigation of hazards. We need a holistic view of appropriate sites.”

For years, Harden has watched progress on environmental justice issues stall as agencies quibble over meandering technical debates of definitions and procedures. In a break from the past, she felt the proposed agreement showed a commitment to creating real change.

“This agreement between EPA and LDEQ was headed around results and outcomes, which is a tremendous step forward,” Harden said.

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“LDEQ has two obligations: to ensure legal and lawful administration of Clean Air Act programs and to ensure compliance with Title VI of the Civil Rights Act. And what this informal resolution agreement focuses on is that LDEQ is not doing either,” said Harden.

THE BEGINNING OF THE END

The negotiations were on precarious footing from the start. The EPA worked with LDEQ to make voluntary changes to its permitting process to avoid punishment, while simultaneously conducting a civil rights investigation that would potentially result in a compliance order.

Meanwhile, LDEQ moved forward with the voluntary agreement, even as the state's attorney general (whose office was involved in the voluntary agreement negotiations) prepared a lawsuit against the EPA's investigation. Emails exchanged between LDEQ and the EPA show negotiations began to falter after the federal staff sent a version of the draft agreement back to LDEQ on May 18.

Days after the draft was sent, Louisiana Attorney General Jeff Landry sued the EPA, the Department of Justice and the Biden administration over the civil rights investigation on May 24 in the U.S. District Court for the Western District of Louisiana. The Attorney General office didn't respond to a request for comment.

The new lawsuit appeared to cast doubt over whether any parties were willing to proceed with the negotiations in good faith. But, despite the looming lawsuit, a June 1 email shows LDEQ staff reassured Dorka that the litigation wouldn't change the agency's commitment, promising to continue to flesh out the draft agreement.

The emails show, however, that progress slowed in the waning weeks of the investigation. The EPA and LDEQ traded blame and frustration over the state of negotiations as the draft agreement sat in limbo and regular meetings were canceled.

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Yet, EPA's case resolution manual states that deadline requirements for ending an investigation are paused while working toward an informal agreement.

The reason for the investigation's untimely end remains unclear. Jordan and other advocates involved in the case have speculated that the litigation from Landry's office increased pressure on the Biden administration to close the case in an attempt to quash a lawsuit that has the potential to evolve into a broader challenge to a key element of the Civil Rights Act if it moves forward.

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The opposition came as the EPA finally pledged to step up its civil rights enforcement to match protocol that has been used by other federal agencies, from the Department of Housing and Urban Development to the Department of Education, for decades.

"The reason we're here is because EPA was late to fulfill its obligations under the Civil Rights Act of 1964," said Carlton Waterhouse, a former EPA attorney and director of Howard University School of Law's Environmental and Climate Justice Center. "And so now, as the agency is trying to fulfill its obligations, we're finding pushback to say that not only are those not obligations, the agency is acting unlawfully by trying to enforce these regulations."

In the past, the EPA has only investigated cases of "intentional discrimination," or instances of blatant racism or differential treatment. But other agencies have historically taken into account the effect policies have. Even if a decision seems neutral on its face, does it disproportionately harm one group more than another? If so, the policy has a disparate impact, which is illegal. Courts across the country have upheld the use of disparate impact in rulings dating back to the 1970s.

In 2015, the U.S. Supreme Court affirmed the use of disparate impact in a housing discrimination case, writing in the decision that a focus on consequences "permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment."

But in his May 24 lawsuit, Attorney General Landry, who is now the leading candidate for Louisiana governor, disagreed. He argued the Civil Rights Act only prohibits "intentional discrimination," and called the EPA's investigation a ploy by "social justice warriors."

"Activities that would be perfectly lawful under environmental law are thus now threatened because EPA believes those activities occur proximate to the 'wrong' racial groups," wrote Landry in the suit.

The logic rings similar to other recent conservative legal attacks, including the argument recently used in overturning precedent on affirmative action, said Waterhouse.

"This is the reverse discrimination argument," Waterhouse said. "Use of that is very politically astute and even legally astute to the degree that the ears of the court are very open to those concerns."

As the Supreme Court has grown more conservative, advocates and legal experts have voiced concern over the potential for Landry's case to set back civil rights enforcement if it moves forward — and potentially reverse progress as well, said Waterhouse, by nullifying past wins for agencies like the Department of Education or eliminating the doctrine of disparate impact altogether.

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THE FUTURE OF LOUISIANA'S AIR PROGRAM

Even with the EPA's investigation being closed, the draft informal agreement produced in May offers a blueprint for addressing decades-old complaints about LDEQ's permitting process. Research and news investigations have repeatedly demonstrated that Black communities in Louisiana live with more air pollution than white communities.

Legal experts agree that nothing in the law prevents the state agency from implementing the measures developed over the 8-month negotiation to ensure it is in compliance with nondiscrimination laws.

"States have the authority to go well beyond anything that the federal government has put in place," said Waterhouse. "So they can be more protective for their citizens. They can be more attentive to preventing disparities in terms of who bears the burden of pollution. They have all kinds of authority to do that."

The draft agreement offered a step-by-step guide for considering various demographics when permitting, explaining how to analyze for potential disparities and what to do if any are found. It also laid out ways to facilitate a more robust public participation process.

"EPA has given LDEQ all of the tools that it could need to do a better job than what it has done," said Jordan.

Whether LDEQ will use those tools remains an open question. When WWNO/WRKF asked LDEQ whether it planned to use the draft agreement, agency press secretary Greg Langley said, "We are glad to have the complaint closed. LDEQ has no comment about the communications that occurred between EPA and LDEQ."

Langley didn't say if the agency planned to make any changes to its permitting program.

The EPA will still pursue other avenues to address the issues that came up in the complaints, including a major lawsuit it launched earlier this year against a neoprene plant in St. John the Baptist Parish and new proposed rules limiting the emission of certain cancer-causing chemicals plaguing Louisiana's chemical corridor. It also plans to conduct its own cumulative impact study in St. John.

But the federal agency hasn't provided any indication that an overhaul of the state's air permit program is in the cards. EPA staff has offered to help LDEQ implement changes if the state decides to strengthen its safeguards against discrimination.

Unless changes are made, Harden said, LDEQ will continue to have the same problems that the EPA identified — and racial disparities will continue to go unchecked.

“Each permit that LDEQ issues in a predominantly Black community in Louisiana is a further violation of civil rights,” she said.

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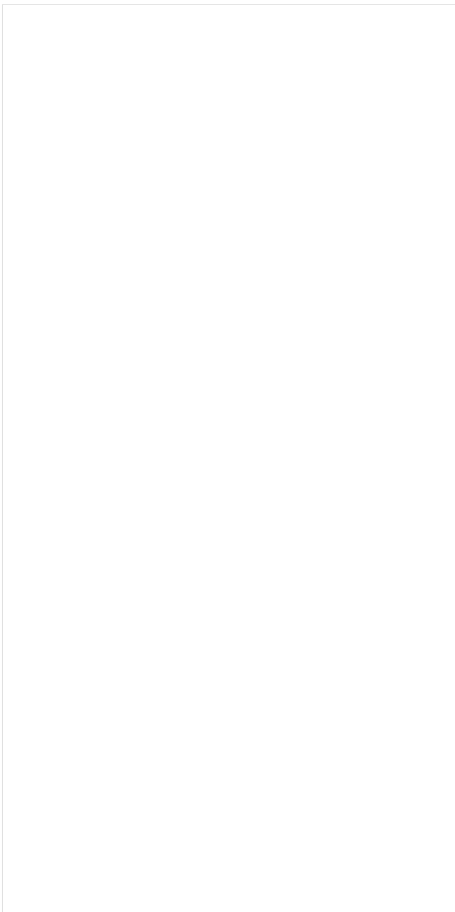


Exhibit 63



LEARN MORE

Shuttered EPA investigation could've brought 'meaningful reform' in Cancer Alley, documents show



The Marathon Petroleum Refinery is visible in Reserve, La., Thursday, Dec. 2, 2021. Environmental advocates and residents of the Louisiana chemical corridor known as Cancer Alley have spent decades calling for change in the way industrial activity is regulated there. The EPA and the Louisiana environmental agency spent months negotiating an agreement that would have fundamentally changed the state's air pollution permitting program. It ultimately fell apart without an agreement. (AP Photo/Gerald Herbert, File)

Photos 1

BY HALLE PARKER AND WWNO

Updated 7:54 AM MST, September 6, 2023

NEW ORLEANS (AP) — As industrial plants have overtaken historic Black communities and burdened neighborhoods with toxic air pollution, environmental advocates and residents of Louisiana's chemical corridor have spent decades calling for change.

So when the country's top environmental regulator opened a high-profile civil rights investigation into Louisiana's Department of Environmental Quality last year, it felt like a watershed moment.

For the first time, the Environmental Protection Agency stepped in to exercise its oversight and evaluate whether LDEQ has granted permits for companies to build and pollute in a way that has caused disproportionate harm to Black communities. Ultimately, they found signs that it has.

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After pledging to clean up Cancer Alley — the nickname for the heavily industrialized, 85-mile stretch of the Mississippi River between Baton Rouge and New Orleans — the EPA issued a letter in October 2022 detailing preliminary evidence of racial discrimination and noncompliance by the state.

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Advocates like Lisa Jordan, who leads the Tulane Environmental Law Clinic, and the clients she represents were cautiously optimistic.

"We dared to hope," said Jordan, who filed one of the complaints that led to EPA's civil rights investigation.

The EPA's findings brought LDEQ to the negotiating table. [Documents and emails newly uncovered by WWNO and WRKF](#) show that staff from the two agencies spent months negotiating a 43-page agreement that would have fundamentally changed Louisiana's air pollution permitting program so that state regulators would have no longer allowed toxic emissions to disproportionately impact certain communities. While the EPA's civil rights investigation could have led to a consent decree that forced LDEQ to change, this voluntary agreement offered a path to reform without punishment.

But, in late June, it all came to a grinding halt.

The EPA abruptly closed the case and ended discussions with the LDEQ, stopping its investigation without coming to a resolution or releasing its findings. The decision blindsided the River Parish residents who took part in the complaints.

"We'd been out here fighting so hard for so long, it felt good to have someone shouldering the burden with us, and it felt good to not be gaslit," said Joy Banner, a St. John the Baptist Parish resident and cofounder of the Descendants Project, in the weeks after. "After all of that fighting, they just abandoned us."

WWNO/WRKF's reporting reveals for the first time the fullest details of the draft agreement and offers a window into how negotiations between the two agencies unraveled. With Louisiana's attorney general now suing the EPA, environmental justice experts and advocates fear that the breakdown could mark the beginning of a major attack on a core aspect of the Civil Rights Act.

‘MEANINGFUL REFORM’

In the month before negotiations ended, LDEQ and EPA staff closed in on an agreement. They exchanged a draft resolution on May 18 that would have ingrained sweeping new procedures for the state to ensure that future permitting decisions included an in-depth analysis into whether the adverse impacts of any new polluting facility would be disproportionately felt by people of a certain race, color or nationality — an outcome also known as “disparate impact.”

Had the agreement been finalized, Louisiana environmental advocates would also have received another major win: LDEQ would have begun studying how a proposed facility would add to a community’s cumulative burdens. For each permit application, the agency would be required to look at the local area’s current exposure to air pollutants as well as how different social or health factors could leave the community vulnerable to harmful effects.

Deep South Center for Environmental Justice Director of Law and Policy Monique Harden, who has more than two decades of law experience, reviewed the May 18 draft of the informal resolution agreement, saying it would have led to “meaningful reform” of the state agency. She wasn’t involved in any of the complaints the EPA investigated.

Most significantly, the agreement would have enforced the state’s legal obligation to request companies look at alternate sites or even deny a permit to lessen any disparate impacts found during its newly robust analysis.

“You can consider, through mapping and statistical data collection and analysis, environmental justice. You can do that all day long and not have any change on the ground for Black communities,” Harden said. “Consideration is weak sauce. We need permit denials. We need reductions in pollution. We need mitigation of hazards. We need a holistic view of appropriate sites.”

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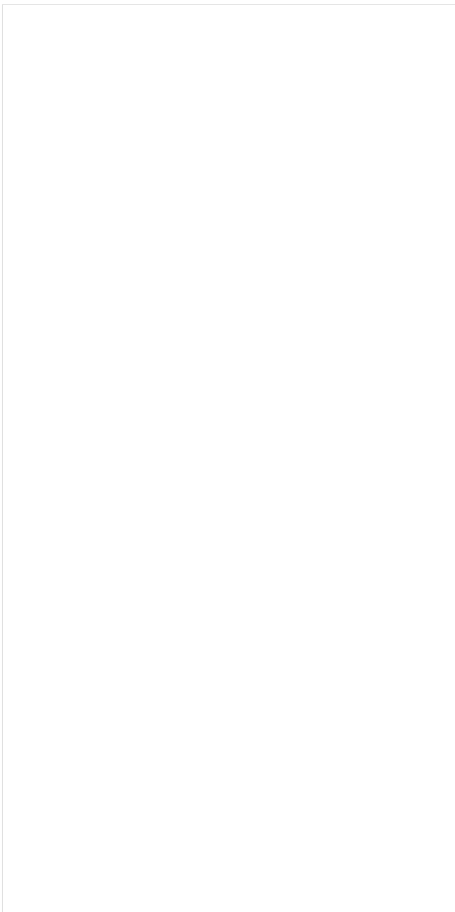


Exhibit 64



Former Top Official Fears EPA Will Implement New EJ Order Via Enforcement

April 27, 2023

[Tweet](#)

Susan Bodine, who led EPA's Office of Enforcement & Compliance Assurance (OECA) during the Trump administration, is raising concerns that EPA will implement President Joe Biden's new executive order (EO) on environmental justice (EJ) through enforcement, rather than through a formal rulemaking.

Bodine, who is now a lawyer at Washington, DC-based Earth & Water Law Group, told an April 25 Federalist Society event that she is also concerned that the new order "assumes" EJ areas "experience disparate and adverse health or environmental burdens," rather than continue the Clinton-era EO of requiring an analysis to determine if those impacts are occurring.

"And so, if you start with that assumption, you're always going to have an environmental justice problem that you need to solve," Bodine says.

Bodine's comments come in response to [the new EO](#) Biden signed in a Rose Garden ceremony April 21.

The order seeks to strengthen EPA and other agencies' reporting, analytical and other mandates aimed at limiting communities' adverse impacts while also creating a new White House Office of Environmental Justice to oversee the administration's "whole-of-government" approach to EJ.

While EJ advocates have welcomed the order for strengthening key provisions in then-President Bill Clinton's 1994 EJ EO, other lawyers have noted it lowers the bar for when agencies must address "disproportionate impacts" on communities.

Stacey Halliday, an EJ-focused lawyer at Beveridge & Diamond, told *Inside EPA* last week that while the Clinton order, EO 12898, had urged agencies to avoid "disproportionately high and adverse" effects, the new EO drops the qualifier, and instead "directs agencies to consider measures to address and prevent disproportionate and adverse environmental health and impacts on communities, including the cumulative impacts of pollution and other burdens like climate change."

While it seems like a small modification, it will have "big impacts," Halliday said, encouraging agencies to consider any impacts -- particularly in the permitting context -- that could be disproportionate, as opposed to only those of a certain scale and magnitude.

Such concerns appear likely to be amplified as EPA and other agencies are expected to implement the order using enforcement authorities.

Bodine notes that while presidents have the prerogative to issue directives, the proper way to implement EOs is through formal notice-and-comment rulemaking. However, if an EO is implemented through enforcement discretion, as she believes the new EJ order will be, then that creates the "problem" of an "uneven playing field."

She notes that the Obama administration had taken such approach, with then-EPA enforcement chief Cynthia Giles issuing a "next generation" enforcement memo that the Justice Department had read to mandate EJ measures be included in every settlement.

While she rescinded the memo, the Biden administration later partially reinstated some of the Obama-era

Regulating Through Enforcement

But with the new EO, Bodine says, “My question there is, OK, are we going to go back to regulating through enforcement? Is the thumb on the scale? We will have to see.”

Bodine cites EPA data to show that cases have long been brought in EJ communities, including 33 percent of all cases in 2017. The last year OECA reported its EJ actions was 2020, “the COVID year,” and there were 531, she added.

She also suggested that the oil and gas industry “has a big X on its back” and is a ripe target for enforcement.

Finally, Bodine flagged EPA’s external civil rights office’s newly amplified warning that compliance with environmental law does not equate to compliance with civil rights law.

That means “someone can ask the agency to withhold money under Title VI [of the Civil Rights Act] even though you are in compliance with” environmental laws. “And the test is discriminatory effect not intent, and a discriminatory effect can be based on any increase in your cumulative burdens,” meaning a single molecule increase of a pollutant may be enough to result in an adverse outcome.

“If that gets fully implemented, that is an enormously powerful tool,” Bodine warned.

Other lawyers are also raising concerns that the new EO will drive stepped up enforcement under Title VI.

For example, attorneys at Hunton Andrews Kurth write in [an April 25 Nickel report](#) that the new EO seeks to encompass Title VI because it “directs agencies to ensure that all federally funded programs or activities do not use criteria, policies, practices or methods of administration that discriminate” and requires the attorney general to report annually to the White House Council on Environmental Quality (CEQ) on relevant Title VI litigation.

The Hunton attorneys also echo concerns raised by Bodine and Halliday that the new EO broadens the definition of EJ beyond EPA’s longstanding definition, because it eliminates the “high” threshold for disproportionate and adverse effects, “effectively lowering the bar for what EJ impacts must be addressed or prevented.”

And they note the EO does not define an EJ community “but signals that a wide range of communities across the country may face EJ concerns,” including low-income areas, high minority and tribal and migrant populations.

These attorneys also flag the significance of housing a new White House Office of Environmental Justice within CEQ, noting that means EJ will weigh heavily in National Environmental Policy Act (NEPA) reviews overseen by CEQ, and they say EJ will likely be prominent in a forthcoming high-profile CEQ NEPA proposal undergoing interagency review.

Further, the order requires EPA to consider EJ when it reviews other agencies’ NEPA reviews.

“Project proponents anticipating NEPA reviews associated with environmental permits should keep apprised of these developments to anticipate how federal agencies will evaluate EJ impacts for their projects.”

‘Equal Protection’

John Cruden, who led the Justice Department’s environment division during the Obama administration and is now a lawyer at Beveridge & Diamond, told the Federalist Society event that some portions of the new EO are important, such as a plan to establish a White House technology office focused on data collection and good science, which he called “a plus.”

And he noted the launch of agency scorecards -- with the first iteration limited to baseline data -- is important because “you’ll get evaluated and that evaluation will be public,” a powerful incentive.

Brian Israel of Arnold & Porter, who said he was asked to defend the Biden administration at the event, argued that

environmental justice is not about “equal pollution” but “equal protection” and “it really shouldn’t be controversial.”

He urged attendees “to recognize this EPA is very serious and very quantitative about” EJ, and that the issue is not “aspirational or qualitative. It is very clear, to get a permit from this EPA or a state that is being guided or monitored by EPA, you have to consider cumulative impacts.”

Israel noted he represents companies seeking to clean up Superfund sites and win Energy Department grants, and “you cannot operate as a business today without having a serious EJ perspective, in some cases a policy, and a sophisticated approach to interacting with communities.” -- Dawn Reeves (dreeves@iwpnews.com)

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Exhibit 65



Weekly Focus

Louisiana Suit Over EPA Civil Rights Authority Seen On High Court Track

July 13, 2023

[Tweet](#)

Industry attorneys say Louisiana's lawsuit claiming EPA lacks authority under Title VI of the Civil Rights Act to take action over "disparate impacts" and must instead show "intentional discrimination" to justify enforcement could be headed to the Supreme Court, even after the agency abruptly closed the investigations at issue in the case.

EPA's "aggressive" enforcement of Title VI in a hostile state such as Louisiana has put the agency in the untenable position of being potentially swept up in litigation that, if successful, could broadly undercut Title VI enforcement across the Biden administration, the attorneys tell *Inside EPA*.

One industry attorney following the dispute says Louisiana's effort to continue its case even after EPA abandoned Title VI investigations into alleged disparate impacts from the state's permitting practices shows there is "blood in the water, and I don't think there is any doubt that those who wish to limit EPA's authority under Title VI see a clear opportunity here to push this case" to what is considered a "very friendly high court."

Additionally, Julius Redd, an attorney at Beveridge & Diamond who focuses on environmental justice issues, adds that Louisiana is "reading the political tea leaves" and has "an understanding of what their chances are."

Despite EPA's retreat on the investigations, Louisiana is continuing to pursue its lawsuit countering them in U.S. District Court for the Western District of Louisiana, telling the court July 6 that "all of its claims [continue to present justiciable controversies](#) within this Court's jurisdiction.

"As the record makes clear, EPA is broadly seeking to enforce disparate impact and cumulative impact permitting requirements that are not authorized by any statute, and EPA is seeking to do so statewide," that filing says.

The arguments the state is making would not just apply to EPA, which has a decades-long track record of unsuccessful attempts at enforcing Title VI, but also elsewhere in the federal government such as the education, transportation and housing departments that for many years have used their administrative authority under the rights law to force funding recipients to address disparate impacts.

Louisiana is explicitly seeking to expand the Supreme Court's precedent requiring private suits under Title VI to demonstrate that any discrimination was intentional, set in a 2001 case known as *Alexander v. Sandoval*, to government action as well. The "intentional" standard is considered impossibly high for plaintiffs to overcome in court.

The Pelican State is taking that step even as newly uncovered documents show that earlier in the dispute it negotiated with EPA on [a draft information resolution agreement](#) to resolve the Title VI complaints.

The draft agreement sought to commit the Louisiana Department of Environmental Quality (LDEQ) to establish a process to identify and address potential adverse disparate effects from air permitting as well as to conduct

cumulative impact assessments. However, the bulk of the now-defunct agreement focused on process, rather than substance.

Jo Banner, of the Descendants Project -- one of the groups that had brought a Title VI petition against LDEQ -- tells *Inside EPA* that the groups thought they were “pretty close to an agreement” when Louisiana **filed suit** in May. And while EPA’s action means its **prior findings of disparity** identified in **the now-closed investigations** go away, “the discrimination does not.”

However, some Title VI advocates say that even if the Supreme Court ultimately extends the precedent that Title VI only applies to “intentional” discrimination to administrative actions, there is another, lesser-known Supreme Court decision that can help agencies show actions by funding recipients result in intentional discrimination even if there is no “smoking gun.”

One Title VI advocate says if EPA were to lose authority to enforce Title VI based on disparate impacts, it could invoke a different high court decision -- *Village of Arlington Heights v. Metropolitan Housing Development Corp.* -- which the advocate describes as allowing “circumstantial evidence to make an intentional case.”

‘Unfinished Business’

Louisiana Attorney General Jeff Landry (R) and his allies “see unfinished business from *Alexander v. Sandoval*,” with this case presenting the “right alchemy of circumstances to get this done. . . . EPA is in a challenging spot,” the first industry attorney explains.

EPA is expected to next file a motion to dismiss the case, which Louisiana would oppose, and there is likely to be briefing over the state’s preliminary injunction request to halt the agency from enforcing disparate impacts under Title VI.

Both the industry attorney and Lisa Jordan, the director of the Tulane Environmental Law Clinic who filed one of the Title VI petitions EPA dropped, say it is stunning that the agency moved so quickly to abandon the investigations, doing so just about a month after the suit was filed and directly notifying the court of its action.

Jordan says, “I don’t know that I’ve ever seen somebody instantly give up . . . and I’ve been litigating for 30 years. . . . It just seemed like they could have acted on so many other options that at least should have been tried.” She adds that Landry inserted himself into the negotiations between EPA and LDEQ and had likely been drafting the lawsuit for months. Jordan adds, “So, to me, this is a [Department of Justice (DOJ)] call” that EPA drop the investigations.

The industry attorney agrees, citing “different stakeholders on the government’s side placing pressure on EPA,” including likely warnings from the White House that “maybe this isn’t the time” to press on civil rights “when we have a lot of other avenues and when civil rights is under a lot of scrutiny,” such as in the Supreme Court’s recently decided affirmative action case. There, a 6-3 majority held that even private colleges may no longer consider race in admissions, potentially **providing ammunition** to EPA Title VI opponents.

A Louisiana victory over EPA “can do really lasting damage, not just in the environmental space” because if the court gets rid of discriminatory impacts under Title VI, that holds vast implications for other agencies that have more active Title VI dockets, she adds. “EPA is in a really nasty spot.”

Should courts embrace Louisiana’s argument, that “doesn’t neutralize Title VI, but it makes it as hard as it is in case law to show intentional” discrimination, the source adds.

Lesser-Known Precedent

However, Title VI advocates point to the high court’s 1977 *Arlington Heights* decision as potentially mitigating the impact of extending intentional discrimination to administrative actions.

There, the justices upheld a zoning ordinance as constitutional after finding no proof that a “discriminatory purpose was a motivating factor” in the village’s decision not to rezone an area for multi-family housing to build a racially integrated low-income housing project.

However, the court applied a balancing test to determine whether the ordinance was based on a discriminatory intent, and the advocates say the criteria for that test allow agencies to show intentional discrimination based on history, legacy and patterns, in lieu of an impossible-to-prove “smoking gun” standard.

DOJ incorporated the balancing factors into its Title VI Legal Manual on [proving intentional discrimination](#) that cites the “Arlington Heights Framework” to note that many cases “are not proven by a single type of evidence. Rather, many different kinds of evidence -- direct and circumstantial, statistical and anecdotal -- are relevant to the showing of intent and should be assessed on a cumulative basis.”

The factors -- also adopted by [EPA in its Title VI case resolution manual](#) -- include: statistics demonstrating a clear pattern of discriminatory effect; the historical background of the decision and other decisions on comparable matters; the sequence of events leading up to the decision; departures from normal procedures; recent legislative or administrative history; and consistent pattern of actions of decisionmakers that impose much greater harm on minorities than non-minorities.

The Title VI advocate says the final criterion in that list “fits Louisiana to a T” and that EPA can show there is a history of discrimination even though the state has never said it intended to locate many highly polluting facilities in the same neighborhoods. “It is the practice that gives grounds to make a case for intentional discrimination.”

Meanwhile, long-time former EPA employee Richard Grow [is offering suggestions](#) for the agency to bolster its work on intentional discrimination, including that it should “do whatever is needed to ensure that [the external civil rights office] has sufficient resources and capacity to evaluate incoming Title VI complaints against evidentiary requirements for making an ‘intent’ case.”

He also says in recommendations for EPA’s 2023-24 Equity Action Plan that the agency could “triage” complaints in areas with long histories of civil rights concerns, such as Louisiana’s “Cancer Alley” or oil and gas operations in the Gulf of Mexico.

Also, Marc Brennan, a former senior civil rights advisor to the Department of Transportation, tells *Inside EPA* that the balancing test from *Arlington Heights* will help EPA and other agencies going forward, if they are required to show -- or decide to show -- intentional discrimination.

There is a “common thought it is hard to prove civil rights cases by using an intent theory of proof, and it is difficult but it is certainly not impossible,” he says.

Agencies can meet that bar by looking to at the recipient’s history, whether they considered alternatives to the discriminatory action, and most crucially, whether they have been warned in the past that the “logical consequences of what they’re doing will inevitably lead to discrimination,” a key factor to proving intent, he says. -- Dawn Reeves (dreeves@iwpnews.com)

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Exhibit 66



Weekly Focus

Michigan Rights Pact Is Latest EPA Let-Down For Flint, Advocates Charge

August 24, 2023

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The scaled-back civil rights agreement EPA and Michigan officials signed earlier this month marks just the latest let-down for Flint, MI, residents, environmental justice (EJ) advocates charge, citing agency inaction over the years on several other high-profile civil rights petitions in the community as well as its failure to prevent lead-contamination of its drinking water.

“The history of environmental racism in Michigan has had devastating consequences for our residents,” Ted Zahrfeld, board chair of the St. Francis Prayer Center, said during an Aug. 10 press conference where local groups denounced EPA’s agreement with state officials to address concerns over an air permit for the Ajax asphalt plant.

“We are part of a worrisome trend: states or communities suffering from Title VI violations and EPA letting us down,” he said.

The agreement was filed over the air permit the Michigan Department of Environment, Great Lakes & Energy (EGLE) issued to Ajax Paving to build a hot-mix asphalt plant near public housing in an already-overburdened area.

Richard Grow, a former EPA official who advocates for civil rights, says the agreement lacks substance even though the allegations it purports to resolve are serious and substantive.

Grow calls it “grotesque to do this to . . . Flint yet again on exactly the same issues” as the notorious EPA case known as *Select Steel*, where the agency in 1988 denied review of a civil rights petition brought by the St. Francis Prayer Center over a permit for a local steel mill.

In *Select Steel*, EPA issued its first-ever order under Title VI, holding there was no violation of the Civil Rights Act because there was no Clean Air Act violation and faced fierce criticism for making the rights law “subordinate” to environmental standards, according to press reports.

In addition to *Select Steel*, Flint groups including the prayer center were the complainants in a 1992 Title VI petition over air permits issued to the Genesee power plant, which took EPA 25 years to address.

On Jan. 19, 2017 -- President Barack Obama’s final day in office, EPA’s External Civil Rights Office issued an order holding that a preponderance of the evidence supported [a finding of discrimination](#) but the agency did not find evidence to support a *prima facie* case of adverse disparate health impacts, so no action was taken.

Flint also suffered an infamous water crisis during the Obama administration, when, for 18 months in 2013, the state switched the city’s water supply to one contaminated with lead. Hundreds of Flint residents sought hundreds of millions of dollars in tort damages, [claiming EPA was negligent](#). Then-EPA Administrator Gina McCarthy acknowledged the agency knew of a “systematic problem” in Flint in 2015 but did not take immediate action.

Zahrfeld at the press conference noted that the Genesee power station is located “in the same industrial park where the Ajax plant now operates. It took 25 years and a lawsuit for the EPA to acknowledge discrimination that that permit decision made. By then, the damage was already done, affecting our health and generational wealth.

In response to these criticisms, an EPA spokeswoman says, “EPA remains fully committed to improving environmental conditions in Flint, Michigan. We have no further comment to add at this time.”

Informal Agreement

At issue is EPA's [Aug. 8 informal resolution agreement](#) with EGLE that requires the state to bolster its outreach and air monitoring near the Ajax site.

The agreement addresses whether the department “discriminated . . . when it approved” Ajax’s permit “by failing to provide meaningful engagement,” and whether EGLE’s “criteria and methods of administering its air permit program . . . has the intent and/or effect of subjecting persons to discrimination.”

But it stops short of requiring cumulative impact considerations in overburdened communities as advocates had sought.

They say the agreement is “watered down” and makes “only cosmetic changes to the state’s problematic air permitting program, allowing the state to continue its historical practice of packing dirty industries into low-income communities of color.”

The agreement also shows how state and federal officials are “not fulfilling their necessary roles as checks and balances to industries that constantly take advantage of the fact that people of color and low-income people have a lot on their plates” just trying to take care of their families, Mona Munroe-Younis, executive director of the Environmental Transformation Movement of Flint, tells *Inside EPA*.

“And they exploit their marginalization and heap more upon them. . . . It’s like we never really get a break, and government agencies are not protecting the people,” she adds.

While the petitioners initially participated in talks between EPA and Michigan, they charged that state regulators shut them out -- and abandoned a tougher draft agreement -- after EPA dropped high-profile civil rights investigations in Louisiana following a lawsuit by that state’s attorney general.

EPA and EGLE “backed away” from an agreement “that would have secured local protections for residents suffering from industrial pollution and reform Michigan’s air permitting program to fix discriminatory” impacts, the EJ groups said in the Aug. 10 statement.

Munroe-Younis said after Louisiana brought its suit, “a chill” fell “over civil rights cases across the country. The calculus changed and then EGLE backed away. . . . We spent 10 months in active negotiations . . . we thought that was a good investment of time in order to resolve the pattern of civil rights violations . . . And what we got in the final agreement we could have accomplished in three meetings.”

She adds that it is “troublesome” that EPA now appears scared to consider disparate impacts “because you cannot address racism without doing that.”

In response to such criticisms, EGLE said, “We realize the agreement does not address all the issues raised by the local residents during our discussion. We remain committed to continuing to work with the community to address ongoing concerns.”

Other environmentalists say EPA’s decision to scale back its agreement with Michigan could set a precedent in other Democratic-led states, such as [Colorado](#), where EPA is also conducting a high-profile “affirmative compliance review” of its compliance with Title VI.

“Even Michigan,” a blue state, “was willing to negotiate what could have been a much better agreement, and then suddenly watered it down.” That shows “Louisiana has emboldened other states to treat Title VI like a joke,” one environmentalist says, adding it is unclear whether additional states will respond in the same way “and that is concerning.”

If EPA ends up enforcing Title VI only in states that are amenable to it, that is “not tenable from a civil rights perspective for EPA to decide to enforce Title VI only in blue states. That’s not OK. It is a federal law that needs to be enforced everywhere,” the source says.

‘Historical Miscarriage’

Grow, the former EPA official, calls it shocking that the agency had the “audacity to go in there and abandon the same community with the same complainants 25 years” later. He says he is “embarrassed for the agency” and calls the agreement a “travesty.”

“*Select Steel* is code for EPA’s historical miscarriage of civil rights,” Grow says, explaining there have been “whole conferences” around the decision and that advocates still call for it to be revoked.

He also points out the Ajax investigation involves the “same complainant, the same framing of the issue and a whole new EPA civil rights program” as well as a Black administrator. “And yet EPA came out and again betrayed the same community.”

Grow adds that EPA has “been gamed radically,” both by EGLE officials as well as Louisiana Attorney General Jeff Landry (R) who filed the suit challenging the agency’s authority to conduct Title VI investigations based on disparate impact, which prompted EPA to drop the probes, though Landry is continuing to seek to pursue the litigation.

The informal resolution process has been “totally perverted in both cases” and not just due to “outside forces because EPA somehow let this happen.”

But Grow adds that the Michigan outcome “feels even more foul than Louisiana,” because of Flint’s history. “Given what happened in 1992 and 1998” and then the water crisis, “to see the same community again betrayed by the same agency is unfathomable.” -- Dawn Reeves (dreeves@iwpnews.com) & Sam Hess (shess@iwpnews.com)

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Exhibit 67



EPA Agrees To DNREC Title VI Permit Inquiry, Despite Apparent Retreat

September 26, 2023

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EPA has quietly agreed to investigate whether the Delaware Department of Natural Resources and Environmental Control (DNREC) violated Title VI of the Civil Rights Act when it approved a permit for a bioenergy facility, a move that appears at odds with advocates' charges that the agency has backed down from its aggressive use of such inquiries.

But one industry lawyer is challenging suggestions that the agency has backed down, arguing instead that it is simply changing its strategy by using its Title VI authority as leverage to force states to create new mitigation programs while sidestepping efforts to clearly define the scope of its Title VI powers.

"EPA appears reluctant to test its authority to enforce claims of discriminatory effect under Title VI," Karen Bennett, a partner at Earth & Water Law, argued in [a Sept. 6 blog post](#) for the Washington Legal Foundation.

EPA's Office of External Civil Rights Compliance (OECRC) told Delaware environment secretary Shawn Garvin in [a Sept. 8 acceptance letter](#) that the agency is investigating whether DNREC "discriminated against the Black, Haitian, and Latino residents living near Bioenergy Development Company's [BDC] Bioenergy Innovation Center" in Sussex County, DE, in violation of Title VI of the Civil Rights Act and EPA's nondiscrimination regulation when it issued an operating permit to the facility.

The letter responds to [a December 2022 complaint](#) that alleges that DNREC "failed to provide adequate information, notices and public participation opportunities to the residents living near BDC's facility, including language services for residents with limited English proficiency (LEP), during the state environmental permit application review process for BDC's facility."

As such, OECRC agrees to investigate whether DNREC's permit application review process for the BDC facility discriminated against the communities near the BDC facility on the basis of race, color, and national origin in violation with Title VI; whether the process discriminated against Spanish speaking and Haitian Creole speaking individuals with LEP on the basis of national origin in violation of Title VI; and whether DNREC has in place and is appropriately implementing procedural safeguards required under the law, and that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations consistent with Title VI and EPA's implementing regulations.

The agency's investigation comes on the heels of what appeared to be a larger retreat on enforcing Title VI claims.

EPA and Michigan officials signed [a scaled-back civil rights agreement](#) in August 2023 to resolve Title VI complaints over a Clean Air Act permit the Michigan Department of Environmental, Great Lakes & Energy (EGLE) issued to Ajax Paving to build a hot-mix asphalt plant near public housing in an already-overburdened area.

But the agreement stopped short of requiring cumulative impact considerations in overburdened communities as advocates had sought. They said the agreement is "watered down" and makes "only cosmetic changes to the state's problematic air permitting program, allowing the state to continue its historical practice of packing dirty industries into

low-income communities of color.”

This also followed the agency’s **closure of two civil rights investigations** it was conducting in Louisiana and rejection of Title VI petitions from environmental and other groups alleging discrimination in state permitting practices after state officials challenged the probes as unconstitutional.

In closing the cases, EPA also dropped efforts to finalize draft informal resolution agreements with Louisiana officials, which would have resolved the investigations without a formal finding of discrimination and would have allowed Louisiana to continue to receive EPA funding.

Strategy Shift

But while many have flagged these retreats as a signal of a wider agency pullback on its ambitious environmental justice efforts, Bennett, the lawyer, is noting that it may just show a shift in the agency’s strategy for implementing such policies.

Bennett argues that EPA’s approach in Louisiana and Michigan “may signal an important shift in the agency’s strategy for implementing the administration’s ambitious environmental justice policies.”

She says that the Supreme Court has previously determined that Title VI only protects against intentional discrimination, and “questioned whether EPA’s regulations that prohibit programs or activities that have the effect of subjecting individuals to discrimination are legally valid.”

Bennett also adds that the agency “seems to ignore” that many circuit courts that have considered this issue also agree that EPA cannot “proscribe” in regulation activities that have a disparate impact on protected groups when such activities are permissible under Title VI.

“EPA’s closing of these investigations suggests the agency prefers to avoid answering these important legal questions,” Bennett said.

She says that in “preferring not to resolve the legal uncertainty,” the agency has instead shifted towards developing the science “to support cumulative health effects that can be used in environmental permitting to show disproportionate burden.”

“This approach is consistent with EPA’s position that compliance with federal environmental laws does not necessarily mean compliance with federal civil rights laws and the agency’s assertion that when a permitting decision has a disparate impact based on race, color, or national origin, it raises a potential violation of Title VI. . . . EPA’s ‘retreat’ appears to be no retreat at all,” she said. -- *Sam Hess* (shess@iwpnews.com)

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Exhibit 68

Shuttered EPA investigation could've brought 'meaningful reform' in Cancer Alley, documents reveal

WWNO - New Orleans Public Radio | By [Halle Parker](#)

Published August 29, 2023 at 12:10 PM CDT



Halle Parker / WWNO

Environmental Protection Agency Administrator Michael Regan announces new proposed rules to cut emissions of carcinogenic chemicals, such as chloroprene and ethylene oxide, that plague Louisiana's chemical corridor at a news conference in St. John the Baptist Parish, Louisiana on April 6, 2023.

As industrial plants have overtaken historic Black communities and burdened neighborhoods with toxic air pollution, environmental advocates and residents of Louisiana's chemical corridor have spent decades calling for change.

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So when the country's top environmental regulator opened a [high-profile civil rights investigation](#) into Louisiana's Department of Environmental Quality last year, it felt like a watershed moment.

For the first time, the Environmental Protection Agency stepped in to exercise its oversight and evaluate whether LDEQ has granted permits for companies to build and pollute in a way that has caused disproportionate harm to Black communities. Ultimately, they found signs that it has.

After pledging to clean up Cancer Alley — the nickname for the heavily industrialized, 85-mile stretch of the Mississippi River between Baton Rouge and New Orleans — the EPA issued a letter in October 2022 detailing [preliminary evidence of racial discrimination](#) and noncompliance by the state.

Advocates like [Lisa Jordan](#), who leads the Tulane Environmental Law Clinic, and the clients she represents were cautiously optimistic.

"We dared to hope," said Jordan, who filed one of the complaints that led to EPA's civil rights investigation.



EPA investigation into Louisiana agencies yields evidence of racial discrimination

The EPA's findings brought LDEQ to the negotiating table. Documents and emails newly uncovered by WWNO and WRKF show that staff from the two agencies spent months negotiating a [43-page agreement](#) that would have fundamentally changed Louisiana's air pollution permitting program so that state regulators would have no longer allowed toxic emissions to disproportionately impact certain communities. While the EPA's civil rights investigation could potentially have led to a consent decree that forced LDEQ to change, this voluntary agreement offered a path to reform without punishment.

But, in late June, it all came to a grinding halt.

The EPA abruptly closed the case and ended discussions with the LDEQ, stopping its

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blindsided the River Parish residents who took part in the complaints.

"We'd been out here fighting so hard for so long, it felt good to have someone shouldering the burden with us, and it felt good to not be gaslit," said Joy Banner, a St. John the Baptist Parish resident and cofounder of the Descendants Project, in the weeks after. "After all of that fighting, they just abandoned us."

WWNO/WRKF's reporting reveals for the first time the fullest details of the [draft agreement](#) and offers a window into how negotiations between the two agencies unraveled. With Louisiana's attorney general now suing the EPA, environmental justice experts and advocates fear that the breakdown could mark the beginning of a major attack on a core aspect of the Civil Rights Act.

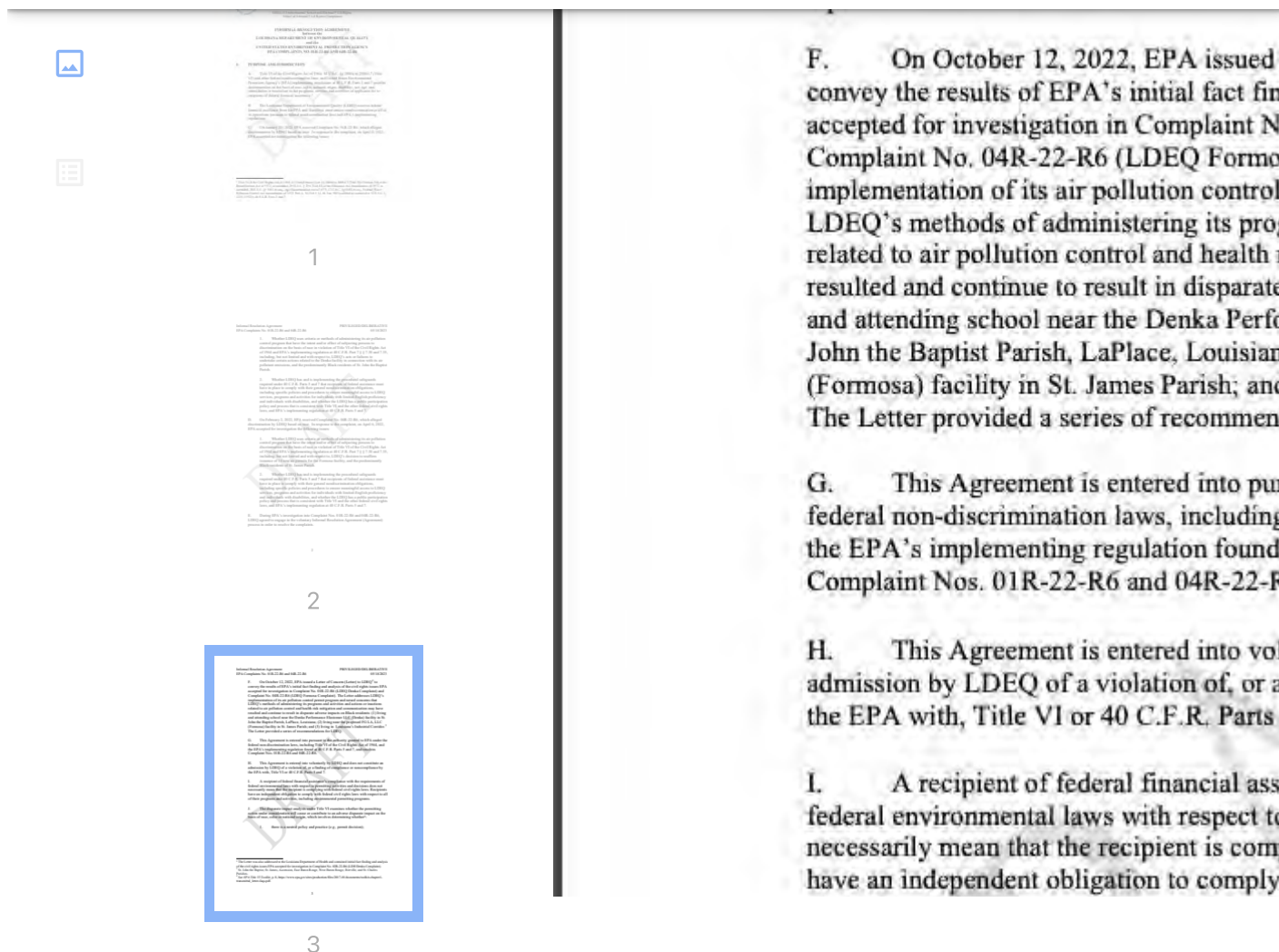
"Meaningful reform"

In the month before negotiations ended, LDEQ and EPA staff closed in on an agreement. They exchanged a draft resolution on May 18 that would have ingrained sweeping new procedures for the state to ensure that future permitting decisions included an in-depth analysis into whether the adverse impacts of any new polluting facility would be disproportionately felt by people of a certain race, color or nationality — an outcome also known as "[disparate impact](#)."

Had the agreement been finalized, Louisiana environmental advocates would also have received another major win: LDEQ would have begun studying how a proposed facility would add to a community's cumulative burdens. For each permit application, the agency would be required to look at the local area's current exposure to air pollutants as well as how different social or health factors could leave the community vulnerable to harmful effects.

Deep South Center for Environmental Justice Director of Law and Policy Monique Harden, who has more than two decades of law experience, reviewed the May 18 draft of the informal resolution agreement, saying it would have led to "meaningful reform" of the state agency. She wasn't involved in any of the complaints the EPA investigated.

2023.05.18 draft 2 IRA 01R-22-R6 and 04R-22-R.pdf



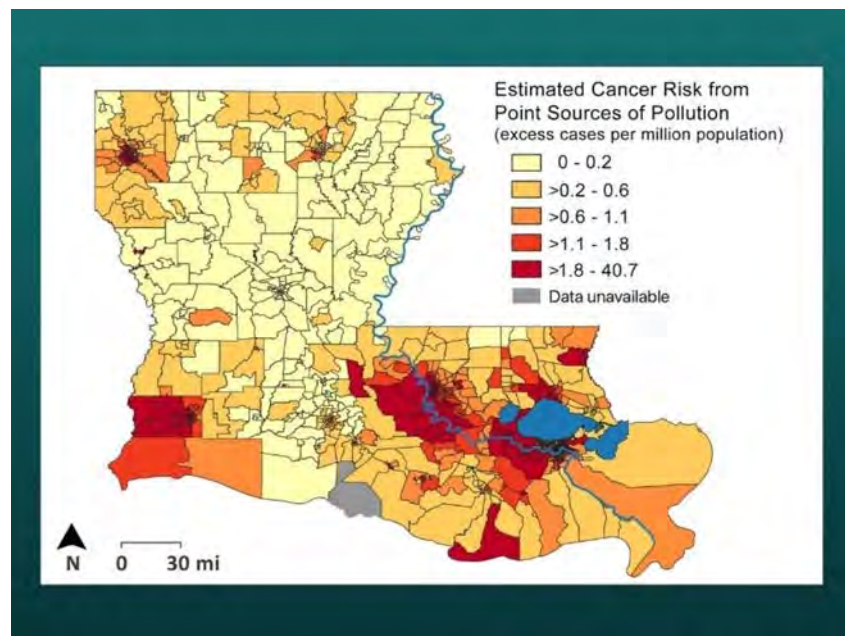
Most significantly, the agreement would have enforced the state's legal obligation to request companies look at alternate sites or even deny a permit to lessen any disparate impacts found during its newly robust analysis.

"You can consider, through mapping and statistical data collection and analysis, environmental justice. You can do that all day long and not have any change on the ground for Black communities," Harden said. "Consideration is weak sauce. We need permit denials. We need reductions in pollution. We need mitigation of hazards. We need a holistic view of appropriate sites."

For years, Harden has watched progress on environmental justice issues stall as agencies quibble over meandering technical debates of definitions and procedures. In a

break from the past, she felt the proposed agreement showed a commitment to creating real change.

“This agreement between EPA and LDEQ was headed around results and outcomes, which is a tremendous step forward,” Harden said.



Tulane University

A 2022 study conducted by Tulane Environmental Law Clinic researchers, published in Environmental Research Letters, estimated that air pollution causes 85 cancer cases annually, with the greatest risk concentrated in the industrialized areas of river parish region and southwest Louisiana.

Requests for disparity analyses and cumulative impact studies are nothing new. Advocacy groups and environmental lawyers like Harden and Jordan have called for LDEQ to conduct such studies since the 1980s.

A [study](#) published in the journal Environmental Challenges in January found that minority communities living in Louisiana’s chemical corridor are exposed to levels of toxic air pollution seven to 21 times higher than predominantly white communities.

But time and again, the state agency has maintained that it isn’t statutorily required to consider disparate impact under environmental legislation like the Clean Air and Clean Water acts nor under Louisiana law.

“They just never engaged at the level of saying it's not possible or it's too hard, or it would take too long. They just never entertained the idea at all,” Jordan said.

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Maps show Louisiana plants disproportionately located near Black communities: report

In the EPA's letter of concern sent on Oct. 12, 2022, it said LDEQ staff should have conducted cumulative impact analyses in the past. It also brought attention to the lack of any written policies internally that guide when LDEQ staff should do such an analysis to comply with the Civil Rights Act.

According to the EPA, LDEQ went as far as to say it only needs to comply with environmental laws, not the Civil Rights Act — an assertion that EPA Deputy Assistant Administrator for External Civil Rights Lilian Dorka called “erroneous.”

“LDEQ has two obligations: to ensure legal and lawful administration of Clean Air Act programs and to ensure compliance with Title VI of the Civil Rights Act. And what this informal resolution agreement focuses on is that LDEQ is not doing either,” said Harden.

The beginning of the end

The negotiations were on precarious footing from the start. The EPA worked with LDEQ to make voluntary changes to its permitting process to avoid punishment, while simultaneously conducting a civil rights investigation that would potentially result in a compliance order.

Meanwhile, LDEQ moved forward with the voluntary agreement, even as the state's attorney general (whose office was involved in the voluntary agreement negotiations) prepared a lawsuit against the EPA's investigation. Emails exchanged between LDEQ and the EPA show negotiations began to falter after the federal staff sent a version of the draft agreement back to LDEQ on May 18.

Days after the draft was sent, Louisiana Attorney General Jeff Landry [sued](#) the EPA, the Department of Justice and the Biden administration over the civil rights investigation on May 24 in the U.S. District Court for the Western District of Louisiana. The Attorney General office didn't respond to a request for comment.

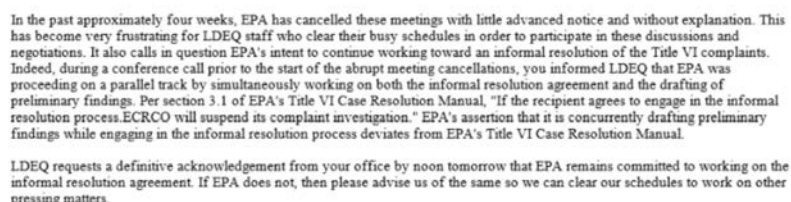
The new lawsuit appeared to cast doubt over whether any parties were willing to

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email shows LDEQ staff reassured Dorka that the litigation wouldn't change the agency's commitment, promising to continue to flesh out the draft agreement.

The emails show, however, that progress slowed in the waning weeks of the investigation. The EPA and LDEQ traded blame and frustration over the state of negotiations as the draft agreement sat in limbo and regular meetings were canceled.

One week before the case was closed, the tension bubbled over in one final exchange. LDEQ lead counsel Courtney Burdette questioned the EPA's commitment to the ongoing talks, citing the frustration of the state staff.



In the past approximately four weeks, EPA has cancelled these meetings with little advanced notice and without explanation. This has become very frustrating for LDEQ staff who clear their busy schedules in order to participate in these discussions and negotiations. It also calls in question EPA's intent to continue working toward an informal resolution of the Title VI complaints. Indeed, during a conference call prior to the start of the abrupt meeting cancellations, you informed LDEQ that EPA was proceeding on a parallel track by simultaneously working on both the informal resolution agreement and the drafting of preliminary findings. Per section 3.1 of EPA's Title VI Case Resolution Manual, "If the recipient agrees to engage in the informal resolution process, ECRCO will suspend its complaint investigation." EPA's assertion that it is concurrently drafting preliminary findings while engaging in the informal resolution process deviates from EPA's Title VI Case Resolution Manual.

LDEQ requests a definitive acknowledgement from your office by noon tomorrow that EPA remains committed to working on the informal resolution agreement. If EPA does not, then please advise us of the same so we can clear our schedules to work on other pressing matters.

A screenshot of an email sent by Courtney Burdette, LDEQ's executive counsel, to EPA External Civil Rights Compliance Office Director Lilian Dorka on June 20, 2023.

Within hours of receiving the email, Dorka wrote back, pointing to the lack of a fully revised draft of the agreement from LDEQ as the reason for the series of meeting cancellations.

"Given how busy everyone is, I will go ahead and cancel the rest of the meetings that I had scheduled and then reschedule as needed once we receive the rest of LDEQ's draft IRA mark-up," Dorka replied.

But another meeting wasn't scheduled.

On June 27, the EPA sent a [letter](#) to LDEQ Secretary Roger Gingles stating they had closed the investigation, with little explanation beyond stating the EPA's Office of External Civil Rights Compliance felt an agreement wouldn't be reached by their July 11 deadline.

Yet, EPA's [case resolution manual states](#) that deadline requirements for ending an investigation are paused while working toward an informal agreement.

The reason for the investigation's untimely end remains unclear. Jordan and other advocates involved in the case have speculated that the litigation from Landry's office increased pressure on the Biden administration to close the case in an attempt to quash a lawsuit that has the potential to evolve into a broader challenge to a key element of the Civil Rights Act if it moves forward.

The Department of Justice [wrote in its notice](#) to the court that the EPA had terminated the complaints at the center of Landry's lawsuit, raising the question of whether it should proceed. A response filed by the attorney general's office made clear that the state planned to continue the lawsuit — which challenges any federal review of disparate impact as a result of environmental permits — regardless of the civil rights investigation's untimely end.

"EPA's and DOJ's entire rationale, we think, for having dismissed this complaint is to poise itself well to succeed in this litigation. So our clients sort of feel that they've been sacrificed," Jordan said. "It's not looking like EPA made a good trade if that's what they did."

Title VI precedent under attack

Since the early days of the EPA's investigation, LDEQ and other state officials have maintained that the agency shouldn't be punished for actions and decisions that comply with environmental laws — even if they result in violations of the Civil Rights Act.

The opposition came as the EPA finally pledged to step up its civil rights enforcement to match protocol that has been used by other federal agencies, from the Department of Housing and Urban Development to the Department of Education, for decades.

"The reason we're here is because EPA was late to fulfill its obligations under the Civil Rights Act of 1964," said [Carlton Waterhouse](#), a former EPA attorney and director of Howard University School of Law's Environmental and Climate Justice Center. "And so now, as the agency is trying to fulfill its obligations, we're finding pushback to say that not only are those not obligations, the agency is acting unlawfully by trying to enforce these regulations."

(Plant)ation Country

Apr 26 · Sea Change

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In the past, the EPA has only investigated cases of “intentional discrimination,” or instances of blatant racism or differential treatment. But other agencies have historically taken into account the effect policies have. Even if a decision seems neutral on its face, does it disproportionately harm one group more than another? If so, the policy has a disparate impact, which is illegal. Courts across the country have upheld the use of disparate impact in rulings dating back to the 1970s.

In 2015, the U.S. Supreme Court [affirmed](#) the use of disparate impact in a housing discrimination case, writing in the decision that a focus on consequences “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”

But in his May 24 lawsuit, Attorney General Landry, who is now the leading candidate for Louisiana governor, disagreed. He argued the Civil Rights Act only prohibits “intentional discrimination,” and called the EPA’s investigation a ploy by “social justice warriors.”



“Activities that would be perfectly lawful under environmental law are thus now threatened because EPA believes those activities occur proximate to the ‘wrong’ racial groups,” wrote Landry in the suit.

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The logic rings similar to other recent conservative legal attacks, including the argument recently used in overturning precedent on affirmative action, said Waterhouse.

"This is the reverse discrimination argument," Waterhouse said. "Use of that is very politically astute and even legally astute to the degree that the ears of the court are very open to those concerns."

As the Supreme Court has grown more conservative, advocates and legal experts have [voiced concern](#) over the potential for Landry's case to set back civil rights enforcement if it moves forward — and potentially reverse progress as well, said Waterhouse, by nullifying past wins for agencies like the Department of Education or eliminating the doctrine of disparate impact altogether.

Waterhouse said state agencies should expect to be required to follow more than one law at once, just like the average citizen. He likened it to driving a car.

"Sometimes you get a no speeding and a no passing law. It means that you have to drive 55 (miles per hour) and stay in that right lane, even though somebody is driving slow in it," he said.

"It's not an either-or, so it's a false dichotomy."

The future of Louisiana's air program

Even with the EPA's investigation being closed, the draft informal agreement produced in May offers a blueprint for addressing decades-old complaints about LDEQ's permitting process. Research and news investigations have repeatedly demonstrated that Black communities in Louisiana live with more air pollution than white communities.

Legal experts agree that nothing in the law prevents the state agency from implementing the measures developed over the 8-month negotiation to ensure it is in compliance with nondiscrimination laws.



Halle Parker / WWNO

Louisiana Department of Environmental Quality Sec. Roger Gingles speaks at a news conference held by the EPA about new pollution rules proposed to help lower emissions and cancer risk in Louisiana's chemical corridor in St. John the Baptist Parish on April 6, 2023.

"States have the authority to go well beyond anything that the federal government has put in place," said Waterhouse. "So they can be more protective for their citizens. They can be more attentive to preventing disparities in terms of who bears the burden of pollution. They have all kinds of authority to do that."

The draft agreement offered a step-by-step guide for considering various demographics when permitting, explaining how to analyze for potential disparities and what to do if

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any are found. It also laid out ways to facilitate a more robust public participation process.

“EPA has given LDEQ all of the tools that it could need to do a better job than what it has done,” said Jordan.

Whether LDEQ will use those tools remains an open question. When WWNO/WRKF asked LDEQ whether it planned to use the draft agreement, agency press secretary Greg Langley said, “We are glad to have the complaint closed. LDEQ has no comment about the communications that occurred between EPA and LDEQ.”

Langley didn’t say if the agency planned to make any changes to its permitting program.

The EPA will still pursue other avenues to address the issues that came up in the complaints, including a major lawsuit it launched earlier this year against a neoprene plant in St. John the Baptist Parish and new proposed rules limiting the emission of certain cancer-causing chemicals plaguing Louisiana’s chemical corridor. It also plans to conduct its own cumulative impact study in St. John.



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if the state decides to strengthen its safeguards against discrimination.

Unless changes are made, Harden said, LDEQ will continue to have the same problems that the EPA identified – and racial disparities will continue to go unchecked.

“Each permit that LDEQ issues in a predominantly Black community in Louisiana is a further violation of civil rights,” she said.

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Halle Parker

Halle Parker reports on the environment for WWNO's Coastal Desk. You can reach her at hparker@wwno.org.

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Exhibit 69


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NATIONAL

< Closed EPA probe could have meant reform for 'Cancer Alley,' documents show

September 4, 2023 · 5:08 AM ET

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LEILA FADEL, HOST:

Since taking office, President Biden has pledged to deliver justice to communities who believe they are taking the brunt of environmental pollution. Many in Louisiana who live in a region known as Cancer Alley had placed their hopes in that promise. But the abrupt closure of a high-profile investigation into one of the country's largest toxic hotspots has advocates questioning whether Biden is living up to his commitment. To talk about this, Halle Parker from member station WWNO is joining us. Hi, Halle.

HALLE PARKER, BYLINE: Hi, Leila.

FADEL: So before we get into your reporting, let's talk about what and where Cancer Alley is.

PARKER: Certainly. So Cancer Alley is actually a nickname for this big swath of Louisiana. The region stretches from New Orleans through Baton Rouge, along the Mississippi River, and it's home to more than 150 industrial plants. And residents there face some of the highest cancer and health risks in the nation due to the air pollution. And studies have actually shown it's worse for Black residents. They're exposed to levels of air pollution up to 21 times higher than their white neighbors.

FADEL: Wow. So what was at the center of this EPA investigation?

PARKER: The investigation was looking at a lot of different things, but at its core, the EPA was investigating whether Louisiana's environmental regulator - the Louisiana Department of Environmental Quality - had allowed companies to build and pollute in a way that had caused disproportionate harm to these Black communities. And notably, you know, it was one of the first times the EPA was linking environmental harm to civil rights violations. And it was also the first time that the EPA had stepped in to look at what residents and environmental advocates in the area had been complaining about for decades.

FADEL: So from what you're describing, this investigation could have had historic consequences. But then the EPA's inquiry abruptly closes in June. But you didn't stop looking into it, right, Halle? You dug in to why it was shut down. So what caught your attention?

PARKER: Yeah. Well, I mean, it was just so shocking that the EPA, out of the blue, shut it all down. It blindsided everyone, you know, even the people involved in this case. So I decided to FOIA the state to see what might turn up. And we ended up getting the last version of an agreement that the EPA and the state had spent months negotiating. And obviously, you know, I'm not a lawyer, so I looked at that agreement with a legal expert, Monique Harden, and she works for the Deep South Center for Environmental Justice. She was actually astonished by how much the agreement could have changed the situation in Louisiana if regulators hadn't walked away. It would have required Louisiana's regulators to go beyond just conducting studies and actually make decisions on permits if they reinforced racial disparities, which could include even denying them. And it was the sort of resolution environmental advocates dreamed of.

FADEL: But then it didn't come to fruition. Suddenly, this EPA case is shut down. So how are people living in Cancer Alley feeling now that they know all this?

PARKER: We still don't have a full picture of everything, like why the EPA closed the case, and that's left residents with a lot of questions. Overwhelmingly, there's this feeling of disappointment. I recently spoke with Robert Taylor. He was one of the

complainants that spurred the investigation in the first place. He lives in Reserve, this small community in the middle of Louisiana's chemical corridor, and leads a group of residents called the Concerned Citizens of St. John. And he told me he was in denial at first. He felt abandoned, like a lot of other residents.

ROBERT TAYLOR: They just cut tail and ran. I'm still flabbergasted by that.

PARKER: But Taylor and others I've spoken to have made clear that they're not giving up on their fights. They just don't feel as confident that this new EPA will live up to all of its promises.

FADEL: Halle Parker is a reporter for member station WWNO in New Orleans. Thanks for this reporting, Halle.

PARKER: Thank you.

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Exhibit 70



EPA drops environmental justice investigations in Louisiana

Nation Jun 28, 2023 11:29 AM EDT

The Biden administration has dropped an investigation into whether Louisiana officials put Black residents living in an industrial stretch of the state at increased cancer risk, despite finding initial **evidence of racial discrimination**, according to a federal court filing Tuesday.

The Environmental Protection Agency said a resolution “is not feasible” by a July deadline. It ends an inquiry that some activists in majority-Black communities had praised as finally offering a chance to improve their health.

The agency said it has taken several “significant actions” involving Denka, a polymer plant at the heart of the investigations, including an agreement to cut emissions. It also **filed a lawsuit** against the company alleging it imposed an unacceptable cancer risk to nearby residents, and tightened regulations. But the investigation did not compel Louisiana to make any commitments of its own. Commonly, a civil rights investigation will end with commitments by the target to do better.

READ MORE: EPA proposal takes on health risks near U.S. chemical plants

Louisiana had argued in a recent federal court filing that the administration had improperly “weaponized” a part of civil rights law in pursuing the investigations.

The Biden administration has prioritized environmental justice, drawing praise from activists for going so far as to **create a new office** last year to focus on cases of alleged environmental discrimination. Those activists were dismayed to learn of the retreat in Louisiana, saying it would be “deeply problematic” if it represents a broader curtailment of civil rights investigations.

“It is a dangerous precedent,” said Patrice Simms, an attorney with Earthjustice, one of the environmental groups that asked the EPA to investigate Louisiana.

Last year, the agency accepted complaints from activists to investigate Louisiana’s regulation of air emissions in an industrial corridor called the Mississippi River Chemical Corridor but colloquially referred to as “cancer alley.” It said there was initial evidence of racial discrimination. The federal government and state officials had been in informal talks to resolve the allegations.

That process has now come to an end without a formal finding of discrimination by the EPA.

“We are disappointed in the EPA,” said Sharon Lavigne, resident and founder of Rise St. James, a group that filed a complaint that prompted the EPA to investigate. It was important to her that EPA Administrator Michael Regan visited the area, she said, adding that she had had high hopes for the investigations.

“We were hopeful because we thought we were going to win this,” she said.

The EPA said it would analyze how residents — especially those who live near the Denka plant — are exposed to a variety of dangerous emissions. The study would aim to “characterize the current baseline cumulative health risks and burdens” in the community and provide recommendations. The EPA wants the community to participate in the process and they invited the state to take part as well, although it is not forced to.

The EPA also disposed of a complaint over emissions from a proposed chemical plant to be operated by FG LA, a Formosa Plastics affiliate, in the same industrial corridor. The agency noted that permits for the facility had been vacated and were now in litigation in state court.

Environmental justice remains vital to the agency’s mission and officials will continue to fight to improve conditions in the two Louisiana parishes at the heart of the now-ended investigation, the EPA said.

“We look forward to our continued partnership with the residents in both parishes as we continue our joint efforts to improve public health and the environment,” the agency said.

The EPA’s initial findings said it appears that for decades, the Louisiana Department of Environmental Quality let a Denka polymer plant expose people who live nearby and children at an elementary school to enough chloroprene, a chemical used to make synthetic rubber, to increase their cancer risk. The EPA had said Black residents “along the entire corridor” bear a disproportionate health risk from pollution, including near the proposed Formosa facility.

Denka has reduced its emissions in recent years. It called the investigation “ill-conceived” and said the EPA should focus on “science, not politics.”

Louisiana filed a federal lawsuit challenging the investigations in May. It accused the EPA of exceeding its authority under Title VI of the Civil Rights Act of 1964 by improperly pressuring the state to make radical changes to the state’s air permitting regime, including implementing new practices that would consider how multiple chemical facilities in an area might cumulatively harm nearby majority-Black communities.

“The agency has weaponized Title VI as a blanket grant of authority to veto any and all permitting decisions that offend its vision of environment justice and ‘equity,’” Louisiana said in a federal court filing last week, asking a judge to halt the investigation.

Title VI of the Civil Rights Act forbids anyone who receives federal funds from discriminating based on race or national origin. It’s been used in housing and transportation, but until the Biden administration, rarely on environmental matters.

READ MORE: Restaurants in New Orleans are recycling oyster shells to save precious coastline

The state says Title VI was designed to go after intentional discrimination, not programs that may incidentally harm one racial group more than another. A conservative Supreme Court in recent years has been skeptical of the EPA’s regulatory authority in major cases concerning greenhouse gas emissions and water pollution. Louisiana argues the EPA is trying to use civil rights law in a way that Congress hasn’t clearly allowed — a position in conflict with the justices’ recent rulings.

Simms said the Supreme Court’s recent decisions are an “invitation for some of these kinds of challenges” from states that are fighting back against the EPA’s power.

The EPA may have decided this wasn’t the right case to test its Title VI authority, said J. Michael Showalter, an environmental attorney with ArentFox Schiff.

Plus, the Supreme Court will soon decide a major affirmative action case that touches on the power behind Title VI. A decision that curtails Title VI could limit the agency’s authority to wield the civil rights law, said Julius Redd, an environmental attorney at Beveridge & Diamond P.C.

“I anticipate that EPA took this action to mitigate the risk” of a bad court ruling, he said.

By – Michael Phillis, Associated Press

Exhibit 71



Sea Change

Abandoned in (Plant)ation Country

By Halle Parker

Published September 20, 2023 at 5:50 AM CDT

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Halle Parker / WWNO

Concerned Citizens of St. John Executive Director Robert Taylor speaks at a news conference held by the Environmental Protection Agency. To his left stands EPA Administrator Michael Regan, who proposed new rules to cut toxic pollution in heavily-industrialized areas like Louisiana's chemical corridor.

Earlier this year, we told the story of how a change in the White House had the potential to turn the tide for Black communities fighting against more environmental pollution in one of the country's largest hotspots for toxic air — Louisiana's industrial corridor nicknamed Cancer Alley.

The Environmental Protection Agency's new leader pledged to use all the tools in his toolbox to deliver "environmental justice," and his agency launched a groundbreaking investigation into alleged civil rights violations by the state. Environmental advocates thought it could be the moment everyone waited for after years of debate over discrimination.

Then, out of the blue, the EPA dropped its high-profile investigation without any resolution. It blindsided everyone.

Today on Sea Change, we go back to Louisiana's industrial corridor to try to find some answers. Why when the EPA was on the cusp of reforming the petrochemical state of Louisiana did it just... back off? Turns out, the implications are even bigger than we imagined. Far bigger than Louisiana.

To fully understand this update, scroll back in our feed and listen to our third episode, (Plantation Country

For more information about Halle's reporting and the circumstances surrounding the EPA's civil rights investigation, [click here](#).

A special thanks to Robert Taylor of the Concerned Citizens of St. John, Sharon Lavigne of Rise St. James, Lisa Jordan of the Tulane Environmental Law Clinic, Monique Harden of the Deep South Center for Environmental Justice and Carlton Waterhouse of Howard University School of Law's Environmental and Climate Justice Center for speaking with us.

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February 24, 2017

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By *Rachel Leven*

Complaints requesting EPA help on issues from drinking water safety to alleged illegal oil dumps waited more than a year for the agency to read them.

Nine months after that, the Environmental Protection Agency was only getting close to responding, according to documents obtained by Bloomberg BNA.

The EPA's nine-month delay to respond to the e-mails, and the content of those messages, are the latest revelations following a recent Bloomberg BNA story that reported the agency didn't check this complaint inbox for civil-rights concerns from June 2014 to July 2015.



The new information shows what appears to be “significant messages that needed attention” and didn’t get it quickly, a civil rights advocate said. The advocate questioned whether the EPA conducted an internal investigation and whether follow-up on these complaints was sufficient.

“It tugs at your heartstrings, at the very least,” Marianne Engelman-Lado, a visiting clinical professor at Yale Law School, told Bloomberg BNA. She pointed to what appears to be a Flint, Mich., resident on drinking water issues to hear from the agency. “Someone was reaching out to their government for help and didn’t get a response. We should expect more from our government.”

The news marks latest blemish on a historically ineffective EPA office that as recently as 2016, the U.S. Commission on Civil Rights said has “failed miserably” on civil rights

protections.

E-mail Scandal

The EPA did not respond to repeated e-mail and phone requests for comment from Bloomberg BNA.

A former EPA staffer familiar with the issue said agency staff knew that the situation looked bad. The EPA wanted to make sure its response was “deliberative and thoughtful,” knowing that “there could be other Flints” in that inbox, the former staffer—who spoke on condition of anonymity—told Bloomberg BNA.

The EPA received 149 messages to the inbox during the 13 months in question, the agency previously told Bloomberg BNA. Of those, 29 e-mails raised discrimination-related concerns, including four new issues that were “immediately referred for jurisdiction review” and some that were already being addressed, the EPA said.

The complaints include at least three messages from Michigan residents for help with water for a handicapped child to a burnt scalp injury in Washington state and diesel spills in Texas, according to the list obtained by Bloomberg BNA.

Other allegations include homes in Texas allegedly built near toxic soil and oil fields, concerns in Mississippi of an ozone-depleting substance released from an air conditioning-related business and a complaint in New Jersey over a building demolition project permit.

The EPA has five days to acknowledge receipt of a message, according to the agency’s regulations implementing Title VI of the Civil Rights Act. It then determines whether the message qualifies as a complaint the agency should review. Title VI bars federal funding recipients from discriminating based on race, color or national origin.

Immediately or Nine Months Later

While the EPA had told Bloomberg BNA that it acted “immediately” to review and assess the e-mail correspondences, new e-mail correspondence shows the agency was actually still crafting its responses in April 2016. That’s nine months after the EPA said it “became aware” of the e-mail that wasn’t being checked.

Engelman-Lado, who is suing the EPA separately over its processing delays on Title VI, said that the e-mail exchange between several staffers in the then-EPA Office of Civil Rights, the agency’s Office of General Counsel and others “seems to reflect a concern about perception and damage control rather than service to people who are raising concerns about toxic exposure, contamination and discrimination.”

“Although there may be other e-mails that we haven’t seen, the absence of discussion of the impact of the delay and what steps should be taken to address that impact in this e-mail chain is noticeable,” Engelman-Lado said.

Engelman-Lado said the focus at this point should be whether the complaints filed were followed up and addressed, including referring them to another agency or program office.

“We haven’t seen a fully accounting” on this issue, Engelman-Lado said.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

STATE OF LOUISIANA,

* CIVIL ACTION NO. 2:23-cv-00692

VERSUS

* JUDGE JAMES D. CAIN, JR.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, ET AL

* MAGISTRATE JUDGE
KATHLEEN KAY

STATE OF LOUISIANA's RESPONSE TO PLAINTIFFS'
RULE 56.1 STATEMENT OF UNDISPUTED FACTS

GENERAL OBJECTION

Plaintiffs tender 19 paragraphs in their Rule 56.1 statement. Louisiana objects that many of the “facts” that statement are not material to resolution of the State’s claims. *See* Fed. R. Civ. P. 56(c); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 161 (1970). Except to the extent expressly admitted herein, Louisiana disputes each and every statement.

RESPONSES AND OBJECTIONS TO SPECIFIC STATEMENTS

1. Shortly after Title VI was enacted in 1964, a Presidential task force and the Department of Justice (DOJ) drafted model Title VI regulations. *See* 45 CFR § 80.3 (1964). These model regulations included a provision that recipients of federal funds may not use “criteria or methods of administration which have the *effect* of subjecting individuals to discrimination” on the basis of race, color, or national origin. *See id.* § 80.3(b)(2) (1964) (emphasis added).

Response #1: Undisputed.

2. In 1966, DOJ promulgated its own Title VI regulations with presidential approval. *See* Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964, 31 Fed. Reg. 10265 (July 29, 1966) (Administrative Record (“AR”) 1-5).

Response #2: Undisputed.

3. In 1973, the Environmental Protection Agency (EPA) promulgated its own Title VI regulations with presidential approval. *See* Nondiscrimination Programs Receiving Federal Assistance from the Environmental Protection Agency, 38 Fed. Reg. 17,968 (July 5, 1973) (AR286-90).

Response #3: Undisputed.

4. Both agencies’ regulations prohibited recipients of federal financial assistance from administering programs in a manner that has the effect of subjecting individuals to discrimination based on race, color, or national origin. *See* Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964, 31 Fed. Reg. 10265 (July 29, 1966) (DOJ)

(AR-15); Nondiscrimination Programs Receiving Federal Assistance from the Environmental Protection Agency, 38 Fed. Reg. 17,968 (July 5, 1973) (EPA) (AR286-90).

Response #4: Undisputed.

5. While both EPA and DOJ have amended their regulations periodically, the discriminatory-effect provisions have remained unchanged in substance for decades. *Compare* 28 C.F.R. § 42.104(b)(2) *with* 31 Fed. Reg. 10,266 (AR2), *and* 40 C.F.R. § 7.35(b) *with* 38 Fed. Reg. 17,968 (AR286).

Response #5: Disputed. As Defendants admit, EPA and DOJ have amended these provisions over time in ways that have potential substantive effects. These amendments presumptively have substantive effect, and Defendants make no attempt to explain why that would not be the case. *See, e.g., Husky Int’l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1586 (2016) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”); *Pub. Lands Council v. Babbitt*, 529 U.S. 728, 746 (2000) (“Why would Congress add the words . . . if . . . they add nothing?”).

The State also notes that this statement lacks context. While the regulations may have changed, the Administration’s actual implementation and enforcement of Title VI has been subject to enormous changes recently. For example, EPA did not even check its inbox for Title VI complaints from June 2014 to July 2015, Exh. 72¹—let alone attempt to take action upon those ignored complaints. More recently, however, EPA’s enforcement has been substantially more aggressive. *See* Exh. 4-9, 41; Exh. 52 at 393-94; Exh. 53 at 241. For example, it initiated the enforcement proceedings at issue here even though the permits at issue *reduced* allowable air emissions, producing environmental benefits, and those benefits disproportionately accrued to racial minorities in the State. *See* Exh. 11 at 15 (By letter dated May 20, 2020, LDEQ informed Denka that an 85% (84.63% rounded) reduction in chloroprene emissions compared to 2014 reported emissions had in fact been achieved.”); Exh. 35. EPA and DOJ

¹ Unless otherwise noted, all references to “Exh.” are to exhibits of the Seidemann Declaration, Seidemann Supplemental Declaration, or Burdette Declaration, which have sequentially numbered exhibits in a single sequence.

have also secured Title VI settlement agreements from Alabama, Michigan, and Missouri in the last twelve months. Exh. 54-57.

6. In 2020, DOJ considered a draft rulemaking that would have sought to eliminate disparate-impact requirements from its Title VI regulations. AR277. Although DOJ submitted a draft Title VI rulemaking for review to the Office of Management and Budget (OMB) on December 21, 2020, *id.*, shortly thereafter, on January 14, 2021, DOJ notified OMB that the Department had decided not to proceed with publication of that rule and requested an end to OMB's review, AR279. The draft rule was never filed for public inspection with the Office of the Federal Register and was never published in the Federal Register. *See* AR279-80.

Response #6: Undisputed.

7. Since 1988, EPA has provided more than one billion dollars in federal financial assistance through annual funding grants to the Louisiana Department of Environmental Quality (LDEQ) and the Louisiana Department of Health (LDH). Declaration of Christopher Watkins ("Watkins Decl.") ¶ 4. Current grants total \$120,238, 571 and at least 16 grant applications are pending. *Id.* ¶ 5.

Response #7: Undisputed.

8. LDEQ and LDH are required to certify, and have certified, their compliance with Title VI and EPA's regulations implementing Title VI when they apply for and receive federal financial assistance from EPA. *Id.* ¶¶ 5-11.

Response #8: Undisputed. The State notes that this fact necessarily means that the State is an "object" of those regulations for purposes of Article III standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

9. In 1984, EPA began requiring that applicants for federal funding assistance submit a signed EPA Form 4700-4. *Id.* ¶ 11. All applications for federal financial assistance by LDEQ, LDH, or the State of Louisiana since 1984 were required to contain a completed and signed Form 4700-4, which

contains certifications that the funding recipient will fully comply with all applicable civil rights statutes and EPA regulations. *Id.*

Response #9: Undisputed. The State notes that this fact again makes plain that the State is the object of the challenged regulations.

10. As the discriminatory-effect provisions of EPA's Title VI regulations have remained unchanged in substance for decades, since 1984 LDEQ, LDH, and the State of Louisiana have certified with every application for federal financial assistance, including those made by LDEQ in June 2023 and by LDH in July 2023, that they will comply with the discriminatory-effect provisions of EPA's Title VI regulations. *Id.* ¶¶ 8-11.

Response #10: Undisputed. The State notes that these recent permit grants in June and July 2023 necessarily extend the term in which the State's agencies are bound to the requirements of Title VI, since the binding effect is only for the duration of the grants. *See* 28 C.F.R. § 42.105 (DOJ); 40 C.F.R. § 7.80 (EPA).

11. On January 20, 2022, EPA's Office of External Civil Rights Compliance (OECRC) received: (1) the complaint subsequently docketed as EPA Complaint No. 01R-22-R6, titled "Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Regarding Civil Rights Violations by Louisiana State Agency Grantees and Environmental Injustice in St. John the Baptist Parish"; and (2) the complaint subsequently docketed as EPA Complaint No. 02R-22-R6, titled "Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Regarding Civil Rights Violations by Louisiana State Agency Grantees and Environmental Injustice in St. John the Baptist Parish." Declaration of Anhthu Hoang ("Hoang Decl.") ¶¶ 6-7.

Response #11: Undisputed.

12. On February 1, 2022, EPA's OECRC received the complaint subsequently docketed as EPA Complaint No. 04R-22-R6, titled "Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C.

§ 2000d, and 40 C.F.R. Part 7 against the Louisiana Department of Environmental Quality for Lack of Environmental Justice Procedures in its Air Permitting Program and Resulting Discriminatory Decision on Formosa Air Permits.” Hoang Decl. ¶ 8.

Response #12: Undisputed.

13. On April 6, 2022, EPA’s OECRC initiated: (1) an investigation of Complaint Nos. 01R-22-R6 and 04R-22-R6, which were filed against LDEQ; and (2) an investigation of Complaint No. 02R-22-R6, which was filed against LDH. Hoang Decl. ¶¶ 9-10.

Response #13: Undisputed.

14. On June 27, 2023, EPA’s OECRC issued a letter to LDEQ administratively closing EPA Complaint Nos. 01R-22-R6 and 04R-22-R6, and stating that no further action will be taken with respect to Complaint Nos. 01R-22-R6 and 04R-22-R6. ECF No. 18-1; *see also* Hoang Decl. ¶ 18. This letter constituted EPA’s final disposition of EPA Complaint Nos. 01R-22-R6, and 04R-22-R6. ECF No. 18-1; *see also* Hoang Decl. ¶ 18.

Response #14: Disputed. The State admits that Doc. 18-1 is a true and accurate copy and that it states: “As a result of its administrative closure, EPA will not initiate under Title VI or other civil rights laws any further action, enforcement or otherwise, in response to these Complaints.” The State objects to number 14 on the basis that the letter speaks for itself. In addition, as explained in the State’s response/reply brief, this action does not moot the State’s challenges.

15. On June 27, 2023, OECRC issued a letter to LDH administratively closing EPA Complaint No. 02R-22-R6, and stating that no further action will be taken with respect to Complaint No. 02R-22-R6. ECF No. 18-2; Hoang Decl. ¶ 19. This letter constituted EPA’s final disposition of EPA Complaint No. 02R-22-R6. ECF No. 18-2; Hoang Decl. ¶ 19.

Response #15: Disputed. The State admits that Doc. 18-2 is a true and accurate copy and that it states: “As a result of its administrative closure, EPA will not initiate under Title VI or other civil rights

laws any further action, enforcement or otherwise, in response to this Complaint.” The State objects to number 15 on the basis that the letter speaks for itself. In addition, as explained in the State’s response/reply brief, this action does not moot the State’s challenges.

16. On July 17, 2023, EPA rejected a Title VI Complaint (EPA Complaint No. 02R-23-R6) against LDEQ (Town of Mansura) that EPA received on December 16, 2022. Hoang Decl. ¶ 20.

Response #16: Undisputed. *See* Response 14.

17. On July 28, 2023, EPA rejected a Title VI Complaint (EPA Complaint No. 07RNO-23- R6) against LDEQ that EPA received on May 31, 2023. Hoang Decl. ¶ 21.

Response #17: Undisputed. *See* Response 14.

18. As of August 15, 2022, there are no Title VI complaints related to LDEQ, LDH, the State of Louisiana, or any of the State’s subcomponents pending at or otherwise under consideration by EPA. Hoang Decl. ¶ 22.

Response #18: Undisputed. The State notes that while there are currently not any pending Title VI complaints by private groups, EPA itself has objected to LDEQ’s issuance of a permit under the Clean Air Act on June 16, 2023. *See* Exh. 84. That objection, which carried the force of law under 42 U.S.C. § 7661d, specifically objected on Title VI disparate-impact grounds, including cumulative-impact grounds, to LDEQ’s proposed granting of the permit at issue. *See id.* Specifically, EPA demanded that to grant the permit that LDEQ must undertake analysis under “civil rights regulations” to avoid “unjustified discriminatory effect” (*i.e.*, Title VI disparate-impact mandates), and that the State consider “whether the community is already disproportionately impacted either by public health or environmental burdens,” (*i.e.*, analyze cumulative disparate impacts). *Id.*

19. EPA has never taken or attempted to take any enforcement steps outlined in 40 C.F.R. § 7.130 (“Actions available to EPA to obtain compliance”) to terminate assistance, refuse to award assistance, or refuse to continue assistance, against any state to obtain compliance with EPA’s disparate-impact regulations. Hoang Decl. ¶ 23.

Response #19: Undisputed. The State notes, however, that EPA has successfully extracted settlements from Alabama, Michigan, and Missouri in the last twelve months alone by threatening enforcement under Title VI. *See* Exh. 54-57.

ADDITIONAL UNDISPUTED MATERIAL FACTS

1. The State does incur or would incur costs to comply with the challenged Title VI disparate-impact regulations. *See* Burdette Declaration ¶¶17-25; Exh. 61 at 18 (explaining that ““statistical evidence is often necessary” to comply with disparate-impact mandates); *Prop. Cas. Insurers Ass’n of Am. v. Donovan*, 66 F. Supp. 3d 1018, 1043-44 (N.D. Ill. 2014) (finding standing based on compliance costs resulting from challenged disparate-impact rule because such mandates “require the [regulated entities] to begin collecting and reviewing information regarding applicants’ race, color, [etc.] to monitor their compliance with the Rule” and thereby “causes [the regulated parties] to incur costs.” (emphasis added)).

2. On October 12, 2022, EPA issued a “Letter of Concern” to LDEQ and LDH. *See* Exh. 11.

3. EPA explained that it “issue[d] th[e] Letter [of Concern] to present significant evidence suggesting that the Departments’ actions or inactions have resulted and continue to result in disparate adverse impacts on Black residents of St. John the Baptist Parish, St. James Parish, and the Industrial Corridor.” Exh. 11 at 2.

4. The Letter of Concern requested that LDEQ and LDH “[c]onduct cumulative impact analysis” and set forth detailed requirements that EPA demanded, at a “minimum,” that “[t]hese cumulative impact analyses should” contain. Exh. 11 at 5-6.

5. The Letter of Concern did not allege that LDEQ or LDH had taken any actions on the basis of intentional discrimination. *See generally* Exh. 11.

6. EPA submitted document demands to LDEQ and LDH on April 26, 2023, as part of its Title VI investigations. *See* Exh. 18.

7. In March 2023, EPA admitted that it could not continue informal negotiations with the State without securing Sierra Club’s consent to an extension. *See* Seidemann Decl. ¶¶ 65-70; *see also* Exh. 42.

8. To secure Sierra Club’s consent, EPA traded non-public information and told attorneys for LDEQ and LDH that EPA “did not think it was a very high price ... in order to get a 120-day extension for the purpose of continuing what we think is a very productive discussion [and] negotiation.” *See* Seidemann Decl. ¶¶ 65-70.

9. EPA and LDEQ/LDH exchanged proposed settlement agreements with each other, including through redlines of EPA’s proposals. *See* Exh. 81-83.

10. In the course of the informal negotiations, EPA never alleged that LDEQ and LDH had taken any actions that were the product of intentional discrimination. *See* Seidemann Decl. ¶109.

Dated: September 29, 2023

Respectfully submitted,

By: /s/ J. Scott St. John

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, Jeff
Landry,

PLAINTIFF,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; et al.,

DEFENDANTS.

CIVIL ACTION NO. 2:23-cv-00692

**STATE’S UNOPPOSED MOTION FOR PARTIAL VOLUNTARY DISMISSAL WITHOUT
PREJUDICE**

The States of Louisiana, by and through its Attorney General, Jeff Landry (the “State”), respectfully moves to dismiss voluntarily, without prejudice: (1) President Biden as a Defendant and (2) Count VII of the State’s Complaint (the “Parallel Tracks” count).

Defendants do not appear to dispute that the relevant Extra-Regulatory Requirements that the State challenges (the cumulative-impact mandates) have *not* received Presidential ratification pursuant to 42 U.S.C. § 2000d-1. (Defendants do dispute that the ratification requirement is applicable here, however.) In light of that concession, the State no longer needs relief against President Biden, since he is not alleged to have ratified illegal mandates, and therefore agrees that he may be dismissed as a Defendant at this time.

Similarly, in light of EPA’s sudden, post-suit abandonment of all pending Title VI investigations, the State’s practical need for relief on Count VII is now substantially diminished. Therefore, to streamline and simplify this case, the State respectfully seeks to dismiss that Count VII voluntarily and to focus on its other claims.

The State has discussed this request with counsel for Defendants, who do not oppose this request.

CONCLUSION

For the foregoing reasons, the State's motion to dismiss voluntarily President Biden and Count VII without prejudice should be granted.

Dated: September 29, 2023

Respectfully submitted,

By: /s/ J. Scott St. John

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[Proposed] Order

The Court has considered the State's Unopposed Motion For Partial Voluntary Dismissal Without Prejudice. The motion is GRANTED.

President Biden is dismissed as a Defendant in this action without prejudice. Count VII is also dismissed without prejudice.

Signed this ____ day of _____, 2023

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE

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STATE’S NOTICE REGARDING CROSS-MOTION FOR SUMMARY JUDGMENT

The States of Louisiana, by and through its Attorney General, Jeff Landry (the “State”), respectfully provides notice that, in an effort to streamline and simplify this case, it is electing not to file a formal cross-motion for summary judgment at this time.

The parties have agreed to, and this Court approved, a briefing schedule providing for four briefs between the parties to resolve the issues presented, although it permits the State to make a cross-motion for summary judgment. *See* Doc. 23.

With the filing of the State’s brief today, existing briefing now totals 162 pages, with Defendants being entitled to an additional 30 pages for their final brief. *See* Doc. 23. In the State’s view, that is sufficient to present all of the issues for this Court’s review adequately. But if the State were to file a formal cross-motion for summary judgment, it would be entitled to an additional reply brief in support of that cross-motion (a fifth brief) under this Court’s Local Rules.

To avoid unnecessary additional briefing, the State therefore is not filing a cross-motion for summary judgment at this time. Instead, it respectfully submits that the existing briefing is sufficient for this Court to resolve the issues presented as a matter of law—particularly where few of the material

facts presented here appear to be disputed, and almost none of them relate to the merits of the State's claims.

The State therefore requests, in reviewing the existing briefs, evidence, and motions, that this Court elect to exercise its discretion under Rule 56(f). That rule provides authority for this Court, in reviewing Defendants' motion for summary judgment, to "grant summary judgment for a nonmovant," Fed. R. Civ. P. 56(f)—*i.e.*, the State. In the State's view, the existing briefing should be sufficient to present the issues here for resolution fully without further expansion. If this Court concludes based on the materials presented that either side is entitled to judgment as a matter of law on a particular claim, it should simply enter judgment for that party on that claim under Rule 56 based on the existing submissions.

The State, however, is happy to defer to whatever procedures that this Court believes is expedient and efficient. Therefore, if this Court would prefer that the State file a formal cross-motion, the State is happy to do so and will comply with any such request expeditiously. If that is the Court's preference, the State requests that the Court enter an order to that effect.

Dated: September 29, 2023

Respectfully submitted,

By: /s/ J. Scott St. John

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UNITED STATES ENVIRONMENTAL
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DEFENDANTS.

DECLARATION OF JOHN W. SINQUEFIELD

1. My name is John W. Sinquefield. I am the Chief Deputy Attorney General in the Louisiana Department of Justice ("LADOJ"). I make this declaration on behalf of LADOJ in support of the State of Louisiana in the above-captioned litigation.
2. I have been admitted to practice law in Louisiana since 1971. In the past I have served as a prosecutor in the Orleans Parish District Attorney's Office, Chief of the Legal Services Section of the Louisiana Attorney General's Office, Technical Assistance Coordinator and Staff Counsel for the National Center for Prosecution Management in Washington, DC, Chief Deputy in the East Baton Rouge Parish District Attorney's Office, First Assistant District Attorney in the Calcasieu District Attorney's Office, First Assistant District Attorney in the East Baton Rouge Parish District Attorney's Office, and First Assistant Attorney General, Senior Counsel and Chief Deputy Attorney General in the Louisiana Department of Justice.
3. I am generally familiar with LADOJ's operations. I am familiar with its law enforcement activities and have been informed by staff that has been in receipt of grant funds, and

that it routinely applies for and receives grants from the US Department of Justice (“USDOJ”).

4. I am informed by staff, that according to usaspending.gov, LADOJ received hundreds of thousands of dollars in grant funding from USDOJ from 2020 through the present. In particular, LADOJ has received at least \$765,140 from USDOJ to support the Louisiana Internet Crimes Against Children (“ICAC”) Task Force.
5. I am informed by staff, that LADOJ intends to continue applying for grants from USDOJ in the future, and that LADOJ expects that it will continue to receive grants from USDOJ in every year for the foreseeable future.

COST OF DISPARATE IMPACT ANALYSIS

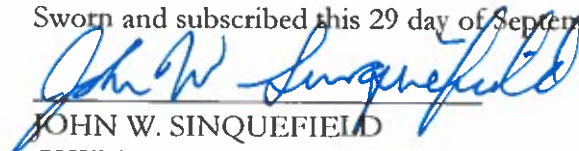
6. LADOJ has authority to conduct certain law enforcement activities statewide, and I am informed by staff that LADOJ does not conduct a disparate impact analysis before engaging in law enforcement activities, and LADOJ intends to engage in the same law enforcement activities it traditionally has without conducting a disparate impact analysis.
7. I am informed by the Director of the Louisiana Bureau of Investigation, which is a division of the LADOJ that while it is uncertain as to what a disparate impact analysis would look like, it is certain that conducting a disparate-impact analysis of, e.g., how law enforcement resources are allocated or deployed would inherently require expenditure of LADOJ resources, including hiring additional staff, purchasing additional equipment, and additional work hours for personnel. Further I am informed by staff that performing that analysis would presumably require LADOJ to collect and review information regarding the race, color, and national origin, of communities impacted by LADOJ activities. Collecting and reviewing that information would additionally cause LADOJ to

incur costs related to determining what data it needs, how to obtain that data, and collecting that data in accord with federal and state laws.

8. It is my understanding that LADOJ policy is that consistent with Equal Protection and the Louisiana Constitution, LADOJ desires to conduct its law enforcement activities – including deploying its personnel and resources – without any consideration of race. *See, e.g., La. Associated Gen. Contractors, Inc. v. State*, 669 So. 2d 1185 (La. 1996) (under Louisiana law, “it is irrelevant whether there is an arguably compelling state interest which justifies the racially discriminatory law. And once it has been determined that a law discriminates against persons of the basis of race, there is no further inquiry.”)
9. It has been my experience that LADOJ makes decisions based on the facts involved and purported violations of law. I am informed by staff that it is believed layering and undefined “disparate impact” analysis into that decision could chill even-handed decision making. Further, conducting such an analysis could expose LADOJ to Litigation for failing to neutrally apply the law without regard to race.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. § 1746.

Sworn and subscribed this 29 day of September, 2023, in Baton Rouge, Louisiana


JOHN W. SINQUEFIELD
CHIEF DEPUTY ATTORNEY GENERAL