

**THE ATTORNEYS GENERAL OF NEW YORK,
MARYLAND, MASSACHUSETTS, NORTH CAROLINA,
OREGON, VERMONT, AND THE DISTRICT OF COLUMBIA**

May 25, 2022

Via Electronic Filing

CEQ-2022-0002

Brenda Mallory
The White House
Chair, Council on Environmental Quality
30 Jackson Place NW
Washington, DC 20503

Re: Climate and Economic Justice Screening Tool Beta Version, 87 Fed. Reg. 10,176 (Feb. 23, 2022)

Dear Ms. Mallory,

The Attorneys General of New York, Maryland, Massachusetts, North Carolina, Oregon, Vermont, and the District of Columbia appreciate the opportunity to provide comments regarding the Council on Environmental Quality's ("CEQ") Climate and Economic Justice Screening Tool Beta Version ("CEJST").¹ The CEJST is an important tool to assist the Biden administration in fulfilling its commitment to advancing environmental justice. Specifically, the CEJST is designed to be used in the implementation of the Justice40 Initiative goal of directing to disadvantaged communities 40 percent of the overall benefits of certain federal investments in climate, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, clean water infrastructure, and the remediation of legacy pollution.² 87 Fed. Reg. at 10,177. The CEJST is intended to identify communities that exhibit conditions of underinvestment in energy, transit, housing, and water infrastructure, suffer

¹ See Climate and Economic Justice Screening Tool, Screening Tool, <https://screeningtool.geoplatform.gov>.

² Executive Order No. 14,008 (Jan. 27, 2021), *Tackling the Climate Crisis at Home and Abroad*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; The White House, *Delivering on Justice40*, <https://www.whitehouse.gov/omb/briefing-room/2021/12/02/delivering-on-justice40/>.

disproportionate pollution burden, and need job training and employment.³ 87 Fed. Reg. at 10,177. While we commend the CEQ for developing the CEJST, we are concerned that the CEJST, in its beta form, does not identify and prioritize communities that are most overburdened with pollution, suffer from chronic underinvestment, and are often communities of color. To better identify and prioritize these communities, the CEJST must incorporate a cumulative impacts approach that includes race and ethnicity and accounts for the discriminatory practices that have led to today's environmental injustices.

I. Environmental Injustice in the United States

Environmental hazards are not distributed evenly in the United States: Communities of color and low-income communities bear a greater share of pollution than White people and wealthier people.⁴ Communities of color and low-income communities bear the cumulative burdens of multiple environmental hazards as well as social stressors, including poverty, poor housing quality, and social inequality.⁵

Toxic Wastes and Race, the 1987 report authored by Dr. Benjamin F. Chavis Jr. and Charles Lee and commissioned by the United Church of Christ's Commission for Racial Justice, was one of the first quantitative efforts that substantively documented the disproportionate burden of environmental pollution – in this case, hazardous waste sites – on communities of color and low-income communities.⁶

Since *Toxic Wastes and Race*, numerous studies have documented the disproportionate siting of hazardous waste sites, industrial facilities, sewage treatment plants, and other locally undesirable and potentially polluting land uses

³ The Justice40 Initiative is modeled after New York's Climate Leadership and Protection Act (CLCPA) which similarly set a goal for disadvantaged communities to receive 40 percent of overall benefits of spending on clean energy and energy efficiency programs, projects or investments in the areas of housing, workforce development, pollution reduction, low-income energy assistance, energy, transportation, and economic development. ECL § 75-0117. New York determined that the 40 percent figure represented a proportional level of spending to the targeted population. For example, the 2010 US Census shows that New York State's population of color is 41.7% of the total population. See NY Renew, *Justice & Equity in the Climate and Community Protection Act*, <https://www.nyrenews.org/equity-memo>.

⁴ Rachel Godsil, *Brown is Dead? Long Live Brown II: Environmental Justice and the Integration Ideal*, 49 N.Y.L. Sch. L. Rev. 1109, 1115 (2004/2005).

⁵ Rachel Morello-Frosch, et al., *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 879 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>.

⁶ United Church of Christ, *Toxic Wastes and Race: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (1987), <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>.

in communities of color and low-income communities.⁷ Indeed, twenty years later, the United Church of Christ published *Toxic Wastes and Race at Twenty*, authored by Dr. Beverly Wright, Dr. Robert Bullard, Dr. Paul Mohai, and Dr. Robin Saha, which concluded that, in the years since the original report, not much had changed, and the distribution of the nation's commercial hazardous waste facilities continued to show significant racial and socioeconomic disparities.⁸

Residents living near polluting facilities can be exposed to more toxic emissions than people who live farther from these sources of pollution.⁹ Thus, decisions to permit polluting facilities in communities of color are often made to avoid adverse health and environmental impacts on White neighborhoods.¹⁰ Communities of color and low-income communities are also disproportionately exposed to other types of pollution, including ambient air pollutants, indoor pollutants such as lead paint, pollutants from industrial and transportation sources, and pollutants via occupational exposure.¹¹

At the same time, environmental benefits disproportionately accrue to White communities and communities with higher incomes. In other words, the communities of color and low-income communities that suffer from environmental pollution have less access to environmental amenities such as parks and open green spaces, healthy food options, and recreational programs.¹² For example, Black neighborhoods in Erie County, New York, which includes Buffalo, one of the most

⁷ Rachel Morello-Frosch, et al., *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 881 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>.

⁸ United Church of Christ, *Toxic Wastes and Race at Twenty 1987-2007* (2007). https://www.ucc.org/what-we-do/justice-local-church-ministries/justice/faithful-action-ministries/environmental-justice/environmental-ministries_toxic-waste-20/.

⁹ Rachel Morello-Frosch, et al., *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 881 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>.

¹⁰ Richard Rothstein, *The Color of Law* 55 (2017).

¹¹ Tamara Leech et al., *Inequitable Chronic Lead Exposure: A Dual Legacy of Social and Environmental Injustice*, Family and Community Health 151 (2016), <https://doi.org/10.1097/FCH.000000000000106>; Rachel Morello-Frosch, et al., *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 881 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>; Environmental Equity Working Group, *Environmental Equity: Reducing Risk for All Communities*, Workgroup Report to the EPA Administrator Vol. 2 at 1, 3 (1992), https://www.epa.gov/sites/default/files/2015-02/documents/reducing_risk_com_vol2.pdf.

¹² Dylan Bugden, *Environmental Inequality in the American Mind: The Problem of Color-Blind Environmental Racism*, Social Problems 2 (Mar. 2022), <https://doi.org/10.1093/socpro/spac005>; Rachel Morello-Frosch, et al., *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 881 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>.

segregated cities in the nation, reportedly had 40 percent of the number of supermarkets compared to predominantly White neighborhoods.¹³ In East Buffalo, buying groceries is especially difficult for many of the 40,000 residents who live farther than half a mile from the nearest supermarket and also lack access to a vehicle or reliable public transportation.¹⁴

The differential burden of environmental pollution on communities with environmental justice concerns is a matter of life and death. Health impacts can start *in utero* and include adverse perinatal outcomes such as low birthweight and premature birth, leading to higher risks of long-term health problems.¹⁵ Communities of color and low-income communities also have significantly higher rates of hypertension, heart disease, and stroke than White people and wealthier people.¹⁶ These communities also experience increased incidence and prevalence of asthma, obesity, diabetes, lung cancer, and mental health and developmental problems.¹⁷ Children are especially vulnerable to the health impacts of environmental pollution.¹⁸

Additionally, the economic impacts of environmental pollution can hinder the ability of people in affected communities to improve the economic and environmental conditions of their community.¹⁹ For example, children who grow up in areas with higher levels of traffic-related air pollution and lead in their homes experience lower adult incomes on average relative to their parents and are more likely to be incarcerated as an adult or have children as teenagers.²⁰

¹³ The Food Equity Scholars, U.B. Food Lab, *Op-ed: East Buffalo Needs Community-Driven Structural Investments, Not Fly-In, Fly-Out Charity*, Civil Eats (May 24, 2022), <https://civileats.com/2022/05/24/op-ed-east-buffalo-needs-community-driven-structural-investments-not-fly-in-fly-out-charity/>.

¹⁴ *Id.*

¹⁵ Rachel Morello-Frosch, *et al.*, *Understanding The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy*, Health Affairs 881 (May 2011), <https://doi.org/10.1377/hlthaff.2011.0153>.

¹⁶ *Id.* at 880.

¹⁷ Philip J. Landrigan, *Environmental Justice and the Health of Children*, Mount Sinai Journal of Medicine 2 (2010), <https://doi.org/10.1002/msj.20173>.

¹⁸ *Id.*

¹⁹ See, e.g., Robert Manduca & Robert J. Sampson, *Childhood Exposure to Polluted Neighborhood Environments and Intergenerational Income Mobility, Teenage Birth, and Incarceration in the USA*, Population and Environment (2021), <https://doi.org/10.1007/s11111-020-00371-5>; Stephen Farber, *Undesirable Facilities and Property Values: Summary of Empirical Studies*, Ecological Economics (1998), [https://doi.org/10.1016/S0921-8009\(97\)00038-4](https://doi.org/10.1016/S0921-8009(97)00038-4).

²⁰ See, e.g., Robert Manduca & Robert J. Sampson, *Childhood Exposure to Polluted Neighborhood Environments and Intergenerational Income Mobility, Teenage Birth, and Incarceration in the USA*, Population and Environment (2021), <https://doi.org/10.1007/s11111-020-00371-5>.

At its inception, environmental justice research debated which mechanisms—race/ethnicity, class, or market dynamics— produced environmental inequality.²¹ Studies now show that a person’s race/ethnicity is the strongest predictor of whether they will have access to a clean and healthy environment.²² As emphasized in *Toxic Wastes and Race at Twenty*, race/ethnicity continues to be an independent and stronger predictor of where hazardous waste facilities are located than income, education, and other socioeconomic indicators.²³ In fact, people of color are much more likely to live near polluters and breathe fine particulate air pollution (PM2.5), the largest environmental cause of human mortality.²⁴ Black people are 75 percent more likely to live near facilities that produce hazardous waste than other Americans.²⁵ Black people are three times more likely to die from exposure to air pollutants than their White people.²⁶ And Black children are more disproportionately affected with lead poisoning than White people.²⁷

II. Causes of Environmental Injustice

Environmental health disparities are rooted in interlocking systems of oppression that created, maintained, and now perpetuate those disparities.²⁸ These

²¹ Dylan Bugden, *Environmental Inequality in the American Mind: The Problem of Color-Blind Environmental Racism*, *Social Problems* 18 (Mar. 2022), <https://doi.org/10.1093/socpro/spac005>.

²² See, e.g., *id.*; Kyle Crowder & Liam Downey, *Interneighborhood Migration, Race, and Environmental Hazards: Modeling Microlevel Processes of Environmental Inequality*, *American Journal of Sociology* 20-22 (2010), <https://doi.org/10.1086/649576>; Laura Cushing, et al., *Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1)*, *American Journal of Public Health* 2341 (2015), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2015.302643>.

²³ United Church of Christ, *Toxic Wastes and Race at Twenty 1987-2007* (2007). https://www.ucc.org/what-we-do/justice-local-church-ministries/justice/faithful-action-ministries/environmental-justice/environmental-ministries_toxic-waste-20/.

²⁴ Christopher W. Tessum, et al., *PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, *Science Advances* (Apr. 28, 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

²⁵ Linda Villarosa, *Pollution Is Killing Black Americans. This Community Fought Back*, *The New York Times* (July 28, 2020), <https://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html>.

²⁶ Qian Di et al., *Air Pollution and Mortality in the Medicare Population*, *The New England Journal of Medicine* 2518 (June 2017), <https://doi.org/10.1056/NEJMoa1702747>.

²⁷ Tamara Leech et al., *Inequitable Chronic Lead Exposure: A Dual Legacy of Social and Environmental Injustice*, *Family and Community Health* (2016), <https://doi.org/10.1097/FCH.000000000000106>.

²⁸ See, e.g., Daniel Carrión et al., *Heading Upstream: Strategies to Shift Environmental Justice Research From Disparities to Equity*, *American Journal of Public Health* 59-60 (Jan. 1, 2022), <https://doi.org/10.2105/AJPH.2021.306605>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, *Social Science & Medicine* 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>; Nathan Donley, et al., *Pesticides and*

disparities stem from the enslavement of African and Native people across this hemisphere, the coerced indentured labor of Asians and Latine/x immigrants, and the forced removal and displacement of Native Americans, including undocumented Indigenous Peoples.²⁹ More proximately, Chinese Exclusion, Japanese internment camps, Spanish castas, paintings, and caste systems, Jim Crow, redlining, and housing covenants, among others, set the stage for the racist views of the early 20th century to become subsumed into seemingly race-neutral policy and zoning decisions.³⁰ It is important to acknowledge the intersectional structures of oppression that led to today's environmental racism and injustices.³¹

The discriminatory government practice of redlining warrants special attention. The term “redlining” comes from the Home Owners’ Loan Corporation (“HOLC”) categorization, which started in the 1930s.³² The HOLC, a government-established corporation, made loans to new homeowners and sought to prevent foreclosures through refinancing mortgages at low interest rates.³³ The HOLC rated neighborhoods into four financial risk and lending categories from the most desirable through the least desirable.³⁴

Specifically, HOLC rated as green or A (“Best”) “ethnically homogeneous” or White, U.S. born, upper- or middle-class neighborhoods where “professional men”

Environmental Injustice in the USA: Root Causes, Current Regulatory Reinforcement and a Path Forward, BMC Public Health 2 (2022). <https://doi.org/10.1186/s12889-022-13057-4>.

²⁹ See, e.g., Slave Voyages, <https://www.slavevoyages.org/>.

³⁰ See, e.g., Julia Mizutani, *In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana*, 31 Georgetown Env'tl. L. Rev. 363, 364-72 (2019); Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, Zoning and the American Dream 101 (Charles M. Harr & Jerold S. Kayden eds., 1989); Raymond Zhong & Nadja Popovich, *How Air Pollution Across America Reflects Racist Policy from the 1930s*, The New York Times (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/climate/redlining-racism-air-pollution.html>; Lylla Younes, et al., *Poison in the Air*, ProPublica (Nov. 2, 2021), <https://www.propublica.org/article/toxmap-poison-in-the-air>; Hiroko Tabuchi & Nadja Popovich, *People of Color Breathe More Hazardous Air. The Sources are Everywhere*, The New York Times (Apr. 28, 2021), <https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html>.

³¹ Richard Rothstein, *The Color of Law* xi (2017) (“By failing to recognize that we now live with the severe, enduring effects of *de jure* segregation, we avoid confronting our constitutional obligation to reverse it.”); Daniel Carrión et al., *Heading Upstream: Strategies to Shift Environmental Justice Research From Disparities to Equity*, American Journal of Public Health 60 (Jan. 1, 2022), <https://doi.org/10.2105/AJPH.2021.306605>; Terry Gross, *A ‘Forgotten History’ Of How The U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

³² Anthony Nardone et al., *Historic Redlining and Urban Health Today*, Environmental Justice 109 (2020), <http://doi.org/10.1089/env.2020.0011>.

³³ *Id.*

³⁴ *Id.* at 110.

lived.³⁵ Blue or B (“Still Desirable”) ratings were used for established, most or nearly all-White, U.S.-born neighborhoods where immigrants or people of color would be less likely to move.³⁶ Yellow or C (“Definitely Declining”) ratings were used for neighborhoods bordering Black neighborhoods where European immigrants and working-class people resided.³⁷ HOLC considered these neighborhoods concerning because “undesirable populations” could move in.³⁸ Finally, red or D (“Hazardous”) ratings were used for neighborhoods where Black, Mexican, Asian, Jewish, or other groups lived, which were often in industrial areas with older buildings and infrastructure.³⁹

These color-coded “residential security maps” were then adopted by the private banking and mortgage industry, leading to the denial of loans in “redlined” or D areas, impeding Black home ownership and hamstringing future wealth creation.⁴⁰ Despite the Fair Housing Act of 1968 banning redlining, most redlined areas remain low-to-moderate income and communities of color, while areas rated “desirable” remain predominantly White with above average incomes.⁴¹

³⁵ See, e.g., Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

³⁶ See, e.g., Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

³⁷ See, e.g., Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

³⁸ See, e.g., Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

³⁹ See, e.g., Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>; Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine 1 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

⁴⁰ Anthony Nardone *et al.*, *Historic Redlining and Urban Health Today*, Environmental Justice 110 (2020), <http://doi.org/10.1089/env.2020.0011>.

⁴¹ *Id.*

Other discriminatory policies also harmed communities of color.⁴² Federal housing policies, including urban renewal as part of the Federal Housing Act of 1949, authorized the systematic demolition Black neighborhoods.⁴³ Transportation policies, such as the Federal Aid Highway Act of 1956, resulted in the construction of the interstate highway system through Black communities.⁴⁴ Government housing and transportation policies resulted in widespread financial and political divestment from communities of color.⁴⁵ These various policies resulted in “White flight” from cities, the displacement of communities of color, and urban decline.⁴⁶

Numerous studies document the legacy of redlining and other government policies on racial and ethnic residential segregation and related disparities in environmental health, including the following disparities.⁴⁷

- Wealth Gap: Redlining has led to a wealth gap whereby White families today have nearly 10 times the net worth of Black families and more than eight times the net worth of Hispanic families.⁴⁸
- Preterm Birth: “Historical redlining may be a structural determinant of present-day preterm birth.”⁴⁹
- Air Pollution: Formerly redlined neighborhoods have higher levels of harmful air pollution.⁵⁰

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*; Deborah N. Archer, *White Men’s Roads Through Black Men’s Homes: Advancing Racial Equity Through Highway Reconstruction*, 73 Vand. L. Rev. 1259, 1273 (Oct. 2020).

⁴⁵ Anthony Nardone *et al.*, *Historic Redlining and Urban Health Today*, Environmental Justice 110 (2020), <http://doi.org/10.1089/env.2020.0011>.

⁴⁶ *Id.*

⁴⁷ *Id.*; see also Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, Social Science & Medicine (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

⁴⁸ Tracy Jan, *Redlining was banned 50 years ago. It’s still hurting minorities today*, The Washington Post (Mar. 28, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/>.

⁴⁹ Nancy Krieger, PhD, *et al.*, *Structural Racism, Historic Redlining, and Risk of Preterm Birth in New York City*, 2017, American Journal of Public Health 1046 (July 1, 2020), <https://doi.org/10.2105/AJPH.2020.305656>.

⁵⁰ Raymond Zhong & Nadja Popovich, *How Air Pollution Across America Reflects Racist Policy From the 1930s*, The New York Times (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/climate/redlining-racism-air-pollution.html>; Jaelyn Jeffrey-Wilensky, *For NYC, the Legacy of Redlining is in the Air we Breathe*, Gothamist (Apr. 1, 2022), <https://gothamist.com/news/for-nyc-the-legacy-of-redlining-is-in-the-air-we-breathe>.

- Poor Housing Quality: Formerly redlined neighborhoods have poorer indoor environments through the infiltration of ambient air pollution, inadequate ventilation, and the presence of mold, asbestos, pests, and dust.⁵¹
- Lead Exposure: Formerly redlined neighborhoods have greater exposure to lead.⁵²
- Lack of Trees and Green Space: Formerly redlined neighborhoods have half as many trees, on average, as the highest-rated predominately White neighborhoods, and less access to green spaces.⁵³
- Extreme Heat: Formerly redlined neighborhoods are hotter than the non-redlined neighborhoods, some by nearly 13 degrees, due to freeways cutting through neighborhoods and heat trapping pavement.⁵⁴
- Flood Risk: Formerly redlined neighborhoods suffer a higher risk of flooding, reflecting disparities in development compounded by decades of disinvestment.⁵⁵
- Access to Water and Sewer: Increased residential segregation heightened racial and ethnic inequalities in the provision of municipal services like water and sewer.⁵⁶

⁵¹ Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, *Social Science & Medicine* 9 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>.

⁵² *Id.*

⁵³ See, e.g., Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, *Social Science & Medicine* 8 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>; Nora McGreevy, *How Redlining Made City Neighborhoods Hotter*, *Smithsonian Magazine* (Sept. 9, 2020), <https://www.smithsonianmag.com/smart-news/how-redlining-made-city-neighborhoods-hotter-180975754/>.

⁵⁴ Meg Anderson, *Racist Housing Practices From The 1930s Linked To Hotter Neighborhoods Today*, *NPR* (Jan. 14, 2020), <https://www.npr.org/2020/01/14/795961381/racist-housing-practices-from-the-1930s-linked-to-hotter-neighborhoods-today>; Nora McGreevy, *How Redlining Made City Neighborhoods Hotter*, *Smithsonian Magazine* (Sept. 9, 2020), <https://www.smithsonianmag.com/smart-news/how-redlining-made-city-neighborhoods-hotter-180975754/>.

⁵⁵ Kriston Capps & Christopher Cannon, *Redlined, Now Flooding*, *Bloomberg* (Mar. 15, 2021), <https://www.bloomberg.com/graphics/2021-flood-risk-redlining/>.

⁵⁶ The Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* at 14 (May 2019), https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.

As a result, redlining is associated with present-day adverse impacts on life expectancy, age-differentiated mortality, and other health outcomes.⁵⁷ Racial and ethnic residential segregation could even be partially responsible for communities of color bearing the brunt of the COVID-19 pandemic's health impact.⁵⁸

III. Federal Environmental Justice Initiatives

As early as 1971, the federal government acknowledged that racial discrimination adversely affects urban low-income communities and the quality of their environment.⁵⁹ In 1983, the U.S. Government Accountability Office found that three out of four hazardous waste facilities in the Southeast were located in largely Black communities.⁶⁰ In 1992, the U.S. Environmental Protection Agency's Environmental Equity Working Group found that low-income communities, people of color, and Indigenous populations "experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides in the workplace."⁶¹

In the 1990s, the federal government undertook a concerted effort to address disparities in environmental protection.⁶² In 1994, President Bill Clinton issued the first formal policy directive subjecting all agencies to Executive Order 12,898: *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.⁶³ Executive Order 12,898 requires, among other things, that each federal agency "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse

⁵⁷ Eun Kyung Lee, *Health Outcomes in Redlined Versus Non-Redline Neighborhoods: A Systematic Review and Meta-Analysis*, *Social Science & Medicine* 8-10 (Feb. 2022), <https://doi.org/10.1016/j.socscimed.2021.114696>; Shuo Jim Huang & Neil Jay Sehgal, *Association of Historic Redlining and Present-Day Health in Baltimore* 4 (2022), <https://doi.org/10.1371/journal.pone.0261028>.

⁵⁸ Min Li & Faxi Yuan, *Historical Redlining and Resident Exposure to COVID-19: A Study of New York City*, *Race and Social Problems* 99 (2022), <https://doi.org/10.1007/s12552-021-09338-z>.

⁵⁹ Clifford Villa, *Environmental Justice: Law, Policy & Regulation* 358 (3d ed. 2020); CEQ, *The Second Annual Report of the Council on Environmental Quality* 190 (Aug. 1971), <https://files.eric.ed.gov/fulltext/ED055922.pdf>.

⁶⁰ U.S. Government Accountability Office, *Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities* (1983), <https://www.gao.gov/products/rced-83-168>.

⁶¹ Environmental Equity Working Group, *Environmental Equity: Reducing Risk for All Communities*, Workgroup Report to the EPA Administrator Vol. 2 1, 3 (1992), https://www.epa.gov/sites/default/files/2015-02/documents/reducing_risk_com_vol2.pdf.

⁶² Clifford Villa, *Environmental Justice: Law, Policy & Regulation* 358 (3d ed. 2020).

⁶³ *Id.*

human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States.”⁶⁴

President George W. Bush took a different approach toward environmental justice.⁶⁵ In 2001, EPA redefined its interpretation of environmental justice to mean environmental protection for everyone, and de-emphasized the need to focus special attention on communities of color and low-income communities.⁶⁶

EPA’s approach was criticized in a 2004 report by EPA’s Inspector General.⁶⁷ The report noted that:

[EPA] indicated that it is attempting to provide environmental justice for everyone. While providing adequate environmental justice to the entire population is commendable, doing so had already been EPA’s mission prior to implementation of the Executive Order; we do not believe the intent of the Executive Order was simply to reiterate that mission. We believe the Executive Order was specifically issued to provide environmental justice to minority and/or low-income populations due to concerns that these populations had been disproportionately impacted by environmental risk.⁶⁸

In 2021, President Joe Biden promised to address the unequal burden of environmental pollution on communities of color.⁶⁹ Relatedly, the President declared a policy that “the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality,” and further articulated that “[a]ffirmatively advancing equity, civil rights, *racial justice*, and equal opportunity is the responsibility of the

⁶⁴ Executive Order, 12,898 (Feb. 11, 1994), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

⁶⁵ Clifford Villa, *Environmental Justice: Law, Policy & Regulation* 363 (3d ed. 2020); Rachel E. Salcido, *Reviving the Environmental Justice Agenda*, 91 Chi.-Kent L. Rev. 115, 121 (2016).

⁶⁶ Clifford Villa, *Environmental Justice: Law, Policy & Regulation* 363 (3d ed. 2020).

⁶⁷ *Id.*

⁶⁸ EPA Office of the Inspector General, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice*, Report No. 2004-P-00007 ii (Mar. 1, 2004), <https://www.epa.gov/sites/default/files/2015-12/documents/20040301-2004-p-00007.pdf>.

⁶⁹ Lisa Friedman, *White House Takes Aim at Environmental Racism, but Won’t Mention Race*, *The New York Times* (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html>. Indeed, the White House Environmental Justice Advisory Council expressly was intended to include expertise on “racial inequity,” Executive Order No. 14,008, § 221(a) (Jan. 27, 2021).

whole of our Government.”⁷⁰ The President also directed all agencies “to address the disproportionately high and adverse human health, environmental, climate-related and other *cumulative impacts* on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”⁷¹

However, in developing criteria for identifying disadvantaged communities under the Justice40 Initiative, going against the recommendation of its advisory council, the CEQ did not include race or ethnicity as a criterion in the CEJST.⁷² The current version of the CEJST identifies communities as disadvantaged if the communities are located in census tracts that are at or above the thresholds in one or more of eight categories of criteria: (1) climate change; (2) clean energy and energy efficiency; (3) clean transit; (4) affordable and sustainable housing; (5) reduction and remediation of legacy pollution; (6) critical clean water and waste infrastructure; (7) health burdens; and (8) training and workforce development.⁷³ The CEJST does not consider the cumulative effects of various environmental, health, and socioeconomic burdens but instead assesses the eight categories in isolation.⁷⁴

IV. The CEJST Needs to be Refined to Better Identify and Prioritize the Most Disadvantaged Communities

In order for the CEJST to perform its intended function, the environmental justice screening tool should be refined to better identify the communities that are in greatest need of federal investments from the Justice40 Initiative. Incorporating a cumulative impacts approach in the CEJST, as has been done in other environmental justice screening tools, will help prioritize communities that face the greatest burdens.⁷⁵

⁷⁰ Executive Order No. 13,985, § 1 (Jan. 20, 2021) (emphasis added).

⁷¹ Executive Order No. 14,008, § 219 (Jan. 27, 2021).

⁷² Lisa Friedman, *White House Takes Aim at Environmental Racism, but Won't Mention Race*, *The New York Times* (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html>.

⁷³ Climate and Economic Justice Screening Tool, *Methodology*, <https://screeningtool.geoplatform.gov/en/methodology>.

⁷⁴ Naveena Sadasivam & Clayton Aldern, *The White House Excluded Race from its Environmental Justice Tool. We Put it Back In.*, *Grist* (Feb. 24, 2022), <https://grist.org/equity/climate-and-economic-justice-screening-tool-race/>.

⁷⁵ See, e.g., Esther Min, et al., *Quantifying the Distribution of Environmental Health Threats and Hazards in Washington State Using a Cumulative Environmental Inequality Index*, *Environmental Justice* (Aug. 2021), <https://doi.org/10.1089/env.2021.0021>; Laura Cushing, et al., *Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1)*, *American Journal of Public Health* (2015), <https://doi.org/10.2105/AJPH.2015.302643>.

The CEJST must also include race and ethnicity and account for the discriminatory practices that have resulted in communities of color being chronically underfunded and overburdened with pollution. As discussed above, a person's race/ethnicity is the strongest predictor of whether they will experience the worst cumulative impacts of environmental pollution.⁷⁶ The omission of race and ethnicity in the CEJST “discounts the impacts faced by middle- or high-income people of color, who still experience pollution at greater rates than their [W]hite counterparts.”⁷⁷ By excluding race and ethnicity, the CEJST could reportedly ignore 2,200 census tracts in which 80 percent or more of the residents are non-White, allowing these communities to fall through the cracks of a system designed to prevent their further environmental marginalization.⁷⁸

An analysis of the CEJST's applicability to New York is illustrative of its shortcomings arising from its omission of race and ethnicity. A total of 1,284,588 New Yorkers live in areas that are supermajority people of color (>80%) but not identified as disadvantaged communities in the CEJST, the majority in New York City Metropolitan Area and on Long Island, as depicted below.

⁷⁶ See, e.g., Dylan Bugden, *Environmental Inequality in the American Mind: The Problem of Color-Blind Environmental Racism*, *Social Problems* 18 (Mar. 2022), <https://doi.org/10.1093/socpro/spac005>; Kyle Crowder & Liam Downey, *Interneighborhood Migration, Race, and Environmental Hazards: Modeling Microlevel Processes of Environmental Inequality*, *American Journal of Sociology* 20-22 (2010), <https://doi.org/10.1086/649576>; Laura Cushing, et al., *Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1)*, *American Journal of Public Health* 2341 (2015), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2015.302643>. See also Daniel R. Faber and Eric J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts*, *Northeastern Environmental Justice Research Collaborative* 7, 32 (2005) (documenting that communities of color in Massachusetts average about six times more chemical releases in to the environment from facilities subject to reporting under the Toxics Use Reduction Act and ten times as many pounds of chemical releases per square mile), <https://www.issuelab.org/resources/2980/2980.pdf>.

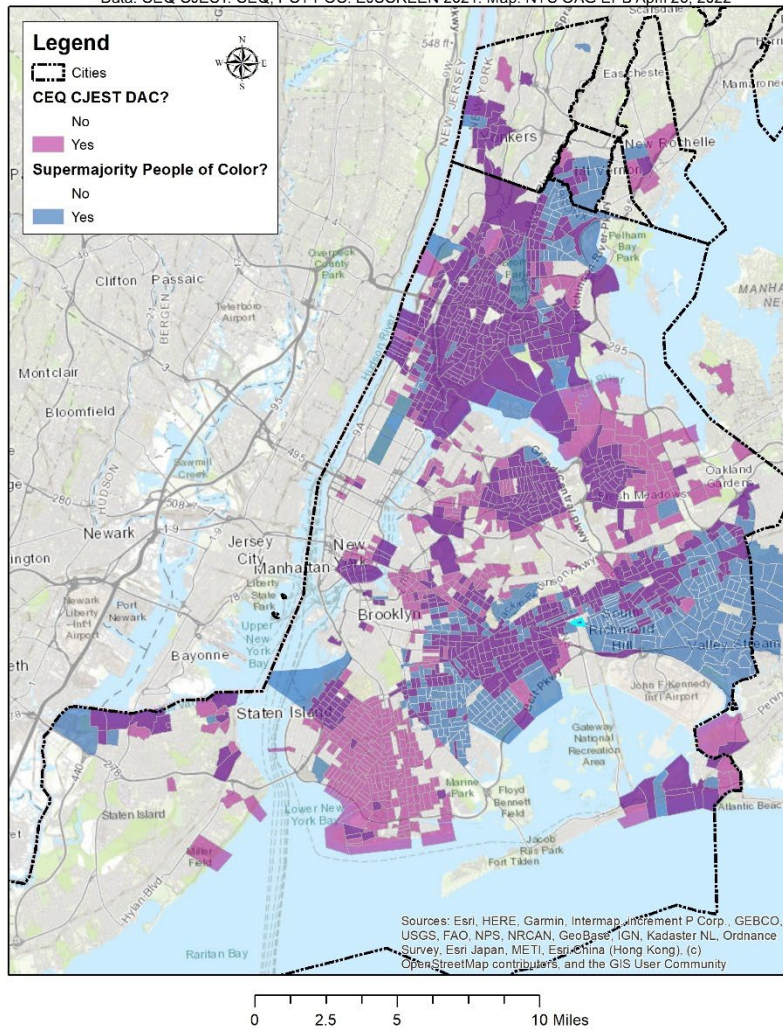
⁷⁷ Keith Hirokawa and Rachel Patterson, *The White House Wants to Fix Environmental Racism Without Mentioning Race*, *Grist* (Apr. 18, 2022), <https://grist.org/fix/justice-40-screening-tool-environmental-racism/>.

⁷⁸ Letter from U.S. Senators to CEQ (Apr. 20, 2022), [https://www.markey.senate.gov/imo/media/doc/2022.04.20%20Follow%20Up%20Letter%20to%20CEQ%20to%20Implement%20CEJST%20\(1\).pdf](https://www.markey.senate.gov/imo/media/doc/2022.04.20%20Follow%20Up%20Letter%20to%20CEQ%20to%20Implement%20CEJST%20(1).pdf) (citing Naveena Sadasivam and Clayton Aldern., *The White House Excluded Race From its Environmental Justice Tool. We Put It Back In: A Grist Analysis Shows How the 'Race-Neutral' Tool Can Still Prioritize Communities of Color*, *Grist* (Feb. 24, 2022), <https://grist.org/equity/climate-and-economic-justice-screening-tool-race/>). The CEJST also identifies 3,500 census tracts as disadvantaged communities where 20 percent or fewer residents identify as non-white. Naveena Sadasivam and Clayton Aldern., *The White House Excluded Race From its Environmental Justice Tool. We Put It Back In: A Grist Analysis Shows How the 'Race-Neutral' Tool Can Still Prioritize Communities of Color*, *Grist* (Feb. 24, 2022), <https://grist.org/equity/climate-and-economic-justice-screening-tool-race/>

County	Total County Population	Urbanized Area	Population Affected	Percent County Affected
Bronx	1,435,029	New York--Newark, NY--NJ--CT	187,068	13.0%
Kings	2,589,929	New York--Newark, NY--NJ--CT	370,669	14.3%
Nassau	1,356,509	New York--Newark, NY--NJ--CT	102,560	7.6%
New York	1,631,887	New York--Newark, NY--NJ--CT	34,282	2.1%
Queens	2,287,207	New York--Newark, NY--NJ--CT	426,269	18.6%
Richmond	474,870	New York--Newark, NY--NJ--CT	7,875	1.7%
Rockland	324,422	New York--Newark, NY--NJ--CT	7,273	2.2%
Suffolk	1,483,832	New York--Newark, NY--NJ--CT	96,483	6.5%
Westchester	968,890	New York--Newark, NY--NJ--CT	49,847	5.1%

Supermajority (>80%) People of Color communities not considered Disadvantaged Communities (DAC) by the CEQ CJEST

Data: CEQ CJEST: CEQ; PCT POC: EJSscreen 2021. Map: NYS OAG EPB April 26, 2022



Upon closer review, many of these communities excluded by the CEJST exhibit conditions of underinvestment in energy, transit, housing, and water infrastructure, suffer disproportionate pollution burdens, lack job training and employment opportunities, and should qualify as disadvantaged communities for purposes of the Justice40 Initiative goal.

For example, Mount Vernon is a small city in Westchester County located just north of the Bronx. While Westchester County is majority-White (Black residents make up only 16.7 percent of the county’s population), Mount Vernon is approximately 65 percent Black.⁷⁹ Mount Vernon is also the second most densely populated city in New York State and one of the most densely populated cities in the country.⁸⁰ For two decades, raw sewage has gushed into Mount Vernon residents’ homes from the city’s failing sewage infrastructure.⁸¹ One of the Metropolitan Transportation Authority’s Metro-North Railroad’s commuter lines cuts through this city.⁸² The southern section, lower-income and more densely populated than the north, suffers the worst of the sewage problems although there are also sewage problems on the north side.⁸³ Mount Vernon’s sewers are composed of 100-year-old clay pipes that are brittle and crack easily with age.⁸⁴ Over the past 20 years, this deteriorating sewer system has resulted in frequent backups of human waste in the toilets, bathtubs, and sinks of Mount Vernon residents.⁸⁵ The grandchildren of Linda McNeil, a Mount Vernon resident whose 20-year ordeal has been featured in numerous media outlets, call her home the “poop house” because it smells like the sewer.⁸⁶ Mount Vernon is the kind of community that the Biden

⁷⁹ Sahana Rao, *Historic NY Funding to Tackle Mount Vernon Sewage Crisis*, NRDC (Apr. 15, 2022), <https://www.nrdc.org/experts/sahana-rao/historic-ny-funding-tackle-mount-vernon-sewage-crisis>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Catharine Smith, *America’s Dirty Divide: ‘We need help’: Sewage crisis hits majority-Black town in New York*, *The Guardian* (May 6, 2021), <https://www.theguardian.com/us-news/2021/may/06/sewage-crisis-hits-majority-black-town-new-york-mount-vernon>; John Freeman Gill, *Mount Vernon, N.Y.: Can Public Art Help to Heal Old Divisions?*, *The New York Times* (Aug. 13, 2021), <https://www.nytimes.com/2021/08/13/realestate/mount-vernon-public-art.html>.

⁸³ Catharine Smith, *America’s Dirty Divide: ‘We need help’: Sewage crisis hits majority-Black town in New York*, *The Guardian* (May 6, 2021), <https://www.theguardian.com/us-news/2021/may/06/sewage-crisis-hits-majority-black-town-new-york-mount-vernon>.

⁸⁴ Sahana Rao, *Historic NY Funding to Tackle Mount Vernon Sewage Crisis*, NRDC (Apr. 15, 2022), <https://www.nrdc.org/experts/sahana-rao/historic-ny-funding-tackle-mount-vernon-sewage-crisis>.

⁸⁵ *See id.*; Jena Brooker, *A Sewage Crisis is Bubbling up in Communities of Color Across the Country*, *Grist* (July 28, 2021), <https://grist.org/housing/a-sewage-crisis-is-bubbling-up-in-communities-of-color-across-the-country/>.

⁸⁶ Tori B. Powell, *New York Town with Crumbling Sewage System to Receive \$150 Million Investment, Governor Says*, *CBS News* (Apr. 15, 2022), <https://www.cbsnews.com/news/new-york-sewage-system-investment-mount-vernon-water-infrastructure/>; Ayana Harry, PIX11, *Mt. Vernon Homes Flood with Sewage as Officials Call for ‘Immediate’ Infrastructure Relief* (July 19, 2021),

administration identified as needing benefits from overdue infrastructure and wastewater investments, but much of the city, including Linda McNeil’s home, appears to be not identified as a disadvantaged community by the CEJST.⁸⁷

South Ozone Park, the predominantly Black neighborhood in Southeast Queens near John F. Kennedy Airport also has failing infrastructure, but appears not to be identified as a disadvantaged community by the CEJST.⁸⁸ A devastating sewage infrastructure failure flooded homes in this community with raw sewage during Thanksgiving 2019.⁸⁹ A year after that event residents were still waiting for compensation from the city for property destroyed by human waste.⁹⁰ The HOLC graded the vast majority of South Ozone Park “C” or definitely declining, with a few areas graded “D” or hazardous.

The Brooklyn neighborhoods of Canarsie and Flatlands, majority-Black neighborhoods (59 percent) where more than 40 percent of residents are born outside the U.S., also appear not to be identified as disadvantaged communities by the CEJST.⁹¹ Canarsie was also heavily impacted by Hurricane Sandy and remains highly vulnerable to future flooding.⁹² Approximately 5,580 households, or almost a third of all Canarsie households, were damaged by the storm.⁹³ Hurricane Sandy resulted in a foreclosure crisis and the area has a large number of foreclosures to

<https://pix11.com/news/local-news/northern-suburbs/mt-vernon-homes-flood-with-sewage-as-officials-call-for-immediate-infrastructure-relief/>.

⁸⁷ Catharine Smith, *‘Every Street has its Own Problem’: Majority Black City Sees Hope After Years of Sewage Crisis*, The Guardian (Feb. 1, 2022), <https://www.theguardian.com/us-news/2022/feb/01/mount-vernon-new-york-sewage-crisis-hope-progress-water>; Catherine Flowers, Mitchell Bernard, *When Environmental Racism Causes a Hygienic Hell*, Op-Ed, The New York Times (Aug. 25, 2021), <https://www.nytimes.com/2021/08/25/opinion/environmental-racism-wastewater-broken.html>.

⁸⁸ Rainier Harris, *South Ozone Park Residents Deal with Latest Sewage Spill After Decades of Disrepair*, Queens Daily Eagle (Dec. 9, 2010), <https://queenseagle.com/all/south-ozone-park-residents-deal-with-latest-sewage-spill-after-decades-of-disrepair>; Katie Van Syckle, *Raw Sewage Flooded Their Homes. They’re Still Waiting for Help*, The New York Times (Apr. 15, 2021), <https://www.nytimes.com/2021/04/15/nyregion/sewage-pipe-flood-queens.html>.

⁸⁹ NYLPI, *South Ozone Park Sewage Legal Assistance Project*, <https://www.nylpi.org/south-ozone-park-sewage-legal-assistance-project/>.

⁹⁰ David Brand & Rachel Vick, *A Year After Sewage Flood, South Ozone Park Families Still Seek Compensation*, Queens Daily Eagle (Nov. 27, 2020), <https://queenseagle.com/all/a-year-after-sewage-flood-south-ozone-park-families-still-seek-compensation>.

⁹¹ Justine Calma, *During Deadly Heat Wave, New York Utility Cut Power to High-Risk Neighborhoods*, Grist (July 23, 2019), <https://grist.org/article/during-deadly-heat-wave-new-york-utility-cut-power-to-high-risk-neighborhoods/>.

⁹² NYC Department of Planning, *Resilient Neighborhoods Flood Risk Atlas*, Canarsie Overview, <https://dcp.maps.arcgis.com/apps/MapJournal/index.html?appid=15c2b6a9fa2842c7b8b1dc7517df2535>.

⁹³ *Id.*

this day.⁹⁴ These neighborhoods are also part of a rapid-transit desert, unserved by a single subway line.⁹⁵ Although Black people make up less than a quarter of New York City’s population as a whole, they accounted for almost half of the 100 or more heat fatalities each year in the city between 2000 and 2012.⁹⁶ Canarsie and Flatlands rank a 4 out of 5 on the city’s heat vulnerability index.⁹⁷ Developed by the Department of Health and Columbia University, the index takes into account social and environmental factors that make certain neighborhoods more at-risk during and right after extreme heat events.⁹⁸ The HOLC graded much of these areas “D” or hazardous.

The CEJST’s identification has also excluded District of Columbia communities of color that have continuously suffered from disproportionate pollution burdens. For example, predominantly Black communities located in sections of Upper Northeast D.C., such as Langdon, Ivy City and River Terrace, have not been identified as disadvantaged communities under CEJST.⁹⁹ Yet, environmental injustices inflict these neighborhoods with a higher risk of lead poisoning, respiratory problems from poor air quality, and adverse health impacts from living adjacent to hazardous sites.¹⁰⁰ The air pollution from heavy truck traffic on Route 50 in the District of Columbia, and the transport of hazardous materials on railroad tracks adjacent to residential housing, has concerned residents of this same Upper Northeast DC region for decades.¹⁰¹ The area also has

⁹⁴ Jie Jenny Zhou, *Climate Change and Soaring Flood Insurance Premiums Could Trigger Another Mortgage Crisis*, Vox (Feb. 25, 2020), <https://www.vox.com/2020/2/25/21146896/climate-change-fema-flood-insurance-mortgage-crisis>; Suzanne Travers, *Canarsie Braces for Foreclosure Wave After Sandy*, City Limits (Feb. 19, 2013), <https://citylimits.org/2013/02/19/canarsie-braces-for-foreclosure-wave-after-sandy/>.

⁹⁵ Thomas J. Campanella, *Watering New York’s Transit Deserts*, Opinion, The New York Times (Aug. 13, 2018), <https://www.nytimes.com/2018/08/13/opinion/mta-new-york-transit-deserts.html>.

⁹⁶ Justine Calma, *During Deadly Heat Wave, New York Utility Cut Power to High-Risk Neighborhoods*, Grist (July 23, 2019), <https://grist.org/article/during-deadly-heat-wave-new-york-utility-cut-power-to-high-risk-neighborhoods/>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Figure 24.2, *Upper Northeast at a Glance*, U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate, https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/24_UNE.pdf.

¹⁰⁰ Jacob Fenston, *New Research Shows the Unequal Health Burden of Air Pollution in D.C.*, DCist Daily (Nov. 16, 2021), <https://dcist.com/story/21/11/16/air-pollution-more-deaths-black-neighborhoods-dc/>; See *Health Equity Report for the District of Columbia 2018* 30-31 (2019), <https://dchealth.dc.gov/publication/health-equity-report-district-columbia-2018>.

¹⁰¹ *An Extra Air Pollution Burden* (identifying D.C. neighborhoods populated by residents of color have higher amounts of fine particle pollution), <https://earthobservatory.nasa.gov/images/149047/an-extra-air-pollution-burden>; *Upper Northeast at a Glance*, U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate 9, 24 (noting large uses in the area such as a metro

a large supply of industrially zoned lands which has brought unwanted municipal land uses, such as trash transfer stations and bus garages.¹⁰² This is just one example of the disproportionate pollution burdens communities of color in the District of Columbia experience, that the CEJST does not reflect.

Residents have stated that Langdon has been “home to . . . some of the most polluted and poisonous water in D.C” and has historically been treated “as a dumping ground” for waste.¹⁰³ Ivy City, home to one of the first black schools in Northeast D.C., has been bearing the burden of poor air quality from heavy traffic on the adjacent major thoroughfare and parking sites for buses and garbage trucks.¹⁰⁴ In addition to poor air quality from DC Route 295, River Terrace residents were also exposed to air pollution from the Benning Road Power Plant until it closed in 2012.¹⁰⁵ All of these communities are closely adjacent to the Anacostia River, also known as “one of the most polluted rivers in the United States.”¹⁰⁶ However, none of these communities have been identified as a disadvantaged community by the CEJST.

Given the analysis above and our experience with confronting race/ethnicity-based environmental injustices in our states, inclusion of race and ethnicity in the CEJST is methodologically essential. It would also be broadly consistent with some of our state environmental justice laws which incorporate consideration of race and ethnicity in identifying environmental justice communities.¹⁰⁷

maintenance facility and railyards),

https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/24_UNE.pdf.

¹⁰² *Upper Northeast at a Glance*, U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate 9,

https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/24_UNE.pdf.

¹⁰³ Rachel Chason, *Ward 5 pushes back as city moves more trucks into already industrial neighborhood*, Washington Post (July 28, 2017) (stating that residents of Langdon Park “have long worried about the balance between residential and industrial land in their Northeast Washington neighborhood”), <https://www.washingtonpost.com/local/dc-politics/2017/07/28/ec85ae4a-72ed-11e7-9eac-d56bd5568db8>; Addison Sarter, Open Letter to Mayor Muriel Bowser (July 2019),

<https://addisonsarter93.medium.com/justice-for-langdon-park-ff2a406df522>.

¹⁰⁴ *Toxic Air in Ivy City, Washington D.C.* (Mar. 26, 2021), <https://www.ceejh.center/air-quality-1/toxic-air-in-ivy-city-washington-dc-zhew9-gw65y>.

¹⁰⁵ DW Rowlands, *How DC Route 295 isolates neighborhoods in Northeast DC from the rest of the city*, Greater Washington (July 20, 2021), <https://ggwash.org/view/81903/both-route-295-and-railroads-divide-neighborhoods-in-northeast-dc>.

¹⁰⁶ Jacob Fenston & Tyrone Turner, *Anacostia Rising* (Mar. 26, 2018) (“decades of underinvestment in the river and the neighborhoods around it, where mostly poor, black residents have suffered the effects of pollution”).

¹⁰⁷ See, e.g., New York Disadvantaged Communities Criteria under the Climate Leadership and Community Protection Act, <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria>; Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, Mass. St.

V. Conclusion

Environmental justice is a civil rights principle that speaks to the right all people have to be protected from environmental pollution and to live, learn, work, play, and pray in a healthy environment, regardless of race or ethnicity, income, national origin, or English language proficiency. We urge CEQ to refine the CEJST to better identify and prioritize disadvantaged communities by adopting a cumulative impacts approach that accounts for racial and ethnic disparities and the race and ethnically based discriminatory practices that have resulted in communities of color being chronically underfunded and overburdened with pollution.

LETITIA JAMES
Attorney General of New York

/s/ Sarah Kam

SARAH KAM
Assistant Attorney General
D Pei Wu, PhD
Environmental Scientist
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005
(212) 416-8465
sarah.kam@ag.ny.gov
Attorneys for State of New York

2021, ch. 8, §§ 56 (definition of “environmental justice population” and “environmental justice principles”).

BRIAN E. FROSH
Attorney General of Maryland

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
Special Assistant Attorney General
Office of the Attorney General of Maryland
200 Saint Paul Place
Baltimore, Maryland 21202
410-576-6414
sgoldstein@oag.state.md.us
Attorneys for the State of Maryland

MAURA HEALEY
Attorney General of Massachusetts

/s/ Christophe Courchesne

CHRISTOPHE COURCHESNE
Assistant Attorney General
Deputy Chief, Energy and Environment
Bureau
Turner Smith
Assistant Attorney General and Deputy Chief
Aleksandra George Ruiz
Special Assistant Attorney General for
Environmental Justice
Marcus Holmes
Environmental Technical Advisor
Environmental Protection Division
Office of Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108
Christophe.Courchesne@mass.gov
(617) 963-2423
Attorneys for Commonwealth of Massachusetts

JOSHUA H. STEIN
Attorney General of North Carolina

/s/ Brenda Menard

Daniel S. Hirschman
Senior Deputy Attorney General
Brenda Menard
Special Deputy Attorney General
Environmental Division
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6000
bmenard@ncdoj.gov
Attorneys for State of North Carolina

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/ Paul Garrahan

Paul Garrahan
Attorney-in-Charge
Steve Novick
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593
Paul.Garrahan@doj.state.or.us
Steve.Novick@doj.state.or.us
Attorneys for Petitioner State of Oregon

KARL A. RANCINE
Attorney General of the District of Columbia

/s/ Lauren Cullum

LAUREN CULLUM
Special Assistant Attorney General
Office of the Attorney General for the
District of Columbia
400 6th St. NW
Washington, DC 20001
(202) 727-3400
lauren.cullum@dc.gov
Attorneys for District of Columbia

TJ DONOVAN
Attorney General of Vermont

/s/ Megan R.H. Hereth

Megan R.H. Hereth
Assistant Attorney General
Vermont Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
megan.hereth@vermont.gov
(802) 828-4605
Attorneys for State of Vermont