

117TH CONGRESS
1ST SESSION

S. _____

To require Federal agencies to address environmental justice, to require consideration of cumulative impacts in certain permitting decisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require Federal agencies to address environmental justice, to require consideration of cumulative impacts in certain permitting decisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Environmental Justice
5 Act of 2021”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

- 8 (1) to require Federal agencies to address and
9 eliminate the disproportionate environmental and

1 human health impacts on populations of color, com-
2 munities of color, indigenous communities, and low-
3 income communities;

4 (2) to ensure that all Federal agencies develop
5 and enforce rules, regulations, guidance, standards,
6 policies, plans, and practices that promote environ-
7 mental justice;

8 (3) to increase cooperation and require coordi-
9 nation among Federal agencies in achieving environ-
10 mental justice;

11 (4) to provide to communities of color, indige-
12 nous communities, and low-income communities
13 meaningful access to public information and oppor-
14 tunities for participation in decision making affect-
15 ing human health and the environment;

16 (5) to mitigate the inequitable distribution of
17 the burdens and benefits of Federal programs hav-
18 ing significant impacts on human health and the en-
19 vironment;

20 (6) to require consideration of cumulative im-
21 pacts in permitting decisions;

22 (7) to clarify congressional intent to afford
23 rights of action pursuant to certain statutes and
24 common law claims; and

1 (8) to allow a private right of action under title
2 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d
3 et seq.) to challenge discriminatory practices.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the Environ-
8 mental Protection Agency.

9 (2) COMMUNITY OF COLOR.—The term “com-
10 munity of color” means any geographically distinct
11 area the population of color of which is higher than
12 the average population of color of the State in which
13 the community is located.

14 (3) COMMUNITY-BASED SCIENCE.—The term
15 “community-based science” means voluntary public
16 participation in the scientific process and the incor-
17 poration of data and information generated outside
18 of traditional institutional boundaries to address
19 real-world problems in ways that may include formu-
20 lating research questions, conducting scientific ex-
21 periments, collecting and analyzing data, inter-
22 preting results, making new discoveries, developing
23 technologies and applications, and solving complex
24 problems, with an emphasis on the democratization

1 of science and the engagement of diverse people and
2 communities.

3 (4) ENVIRONMENTAL JUSTICE.—The term “en-
4 vironmental justice” means the fair treatment and
5 meaningful involvement of all individuals, regardless
6 of race, color, national origin, educational level, or
7 income, with respect to the development, implemen-
8 tation, and enforcement of environmental laws, regu-
9 lations, and policies to ensure that—

10 (A) populations of color, communities of
11 color, indigenous communities, and low-income
12 communities have access to public information
13 and opportunities for meaningful public partici-
14 pation relating to human health and environ-
15 mental planning, regulations, and enforcement;

16 (B) no population of color or community of
17 color, indigenous community, or low-income
18 community shall be exposed to a dispropor-
19 tionate burden of the negative human health
20 and environmental impacts of pollution or other
21 environmental hazards; and

22 (C) the 17 Principles of Environmental
23 Justice written and adopted at the First Na-
24 tional People of Color Environmental Leader-

1 ship Summit held on October 24 through 27,
2 1991, in Washington, DC, are upheld.

3 (5) FEDERAL AGENCY.—The term “Federal
4 agency” means—

5 (A) each Federal agency represented on
6 the Working Group; and

7 (B) any other Federal agency that carries
8 out a Federal program or activity that substan-
9 tially affects human health or the environment,
10 as determined by the President.

11 (6) FENCELINE COMMUNITY.—The term
12 “fenceline community” means a population living in
13 close proximity to a source of pollution.

14 (7) INDIGENOUS COMMUNITY.—The term “in-
15 digenous community” means—

16 (A) a federally recognized Indian Tribe;

17 (B) a State-recognized Indian Tribe;

18 (C) an Alaska Native or Native Hawaiian
19 community or organization; and

20 (D) any other community of indigenous
21 people, including communities in other coun-
22 tries.

23 (8) INFRASTRUCTURE.—The term “infrastruc-
24 ture” means any system for safe drinking water,
25 sewer collection, solid waste disposal, electricity gen-

1 eration, communication, or transportation access (in-
2 cluding highways, airports, marine terminals, rail
3 systems, and residential roads) that is used to effec-
4 tively and safely support—

5 (A) housing;

6 (B) an educational facility;

7 (C) a medical provider;

8 (D) a park or recreational facility; or

9 (E) a local businesses.

10 (9) **LOW INCOME.**—The term “low income”
11 means an annual household income equal to, or less
12 than, the greater of—

13 (A) an amount equal to 80 percent of the
14 median income of the area in which the house-
15 hold is located, as reported by the Department
16 of Housing and Urban Development; and

17 (B) 200 percent of the Federal poverty
18 line.

19 (10) **LOW-INCOME COMMUNITY.**—The term
20 “low-income community” means any census block
21 group in which 30 percent or more of the population
22 are individuals with low income.

23 (11) **MEANINGFUL.**—The term “meaningful”,
24 with respect to involvement by the public in a deter-
25 mination by a Federal agency, means that—

1 (A) potentially affected residents of a com-
2 munity have an appropriate opportunity to par-
3 ticipate in decisions regarding a proposed activ-
4 ity that will affect the environment or public
5 health of the community;

6 (B) the public contribution can influence
7 the determination by the Federal agency;

8 (C) the concerns of all participants in-
9 volved are taken into consideration in the deci-
10 sion-making process; and

11 (D) the Federal agency—

12 (i) provides to potentially affected
13 members of the public accurate informa-
14 tion; and

15 (ii) facilitates the involvement of po-
16 tentially affected members of the public.

17 (12) POPULATION OF COLOR.—The term “pop-
18 ulation of color” means a population of individuals
19 who identify as—

20 (A) Black;

21 (B) African American;

22 (C) Asian;

23 (D) Pacific Islander;

24 (E) another nonWhite race;

25 (F) Hispanic;

1 (G) Latino; or

2 (H) linguistically isolated.

3 (13) PUBLISH.—The term “publish” means to
4 make publicly available in a form that is—

5 (A) generally accessible, including on the
6 internet and in public libraries; and

7 (B) accessible for—

8 (i) individuals who are limited in
9 English proficiency, in accordance with Ex-
10 ecutive Order 13166 (65 Fed. Reg. 50121
11 (August 16, 2000)); and

12 (ii) individuals with disabilities.

13 (14) WORKING GROUP.—The term “Working
14 Group” means the interagency Federal Working
15 Group on Environmental Justice convened under
16 section 1–102 of Executive Order 12898 (42 U.S.C.
17 4321 note), as amended by Executive Order 12948
18 (60 Fed. Reg. 6381 (January 30, 1995)) and modi-
19 fied by section 4.

20 **SEC. 4. INTERAGENCY FEDERAL WORKING GROUP ON EN-**
21 **VIRONMENTAL JUSTICE.**

22 (a) IN GENERAL.—Not later than 90 days after the
23 date of enactment of this Act, the Administrator shall con-
24 vene, as appropriate to carry out this section, the Working
25 Group.

1 (b) REQUIREMENTS.—

2 (1) COMPOSITION.—The Working Group shall
3 be comprised of the following (or a designee):

4 (A) The Secretary of Agriculture.

5 (B) The Secretary of Commerce.

6 (C) The Secretary of Defense.

7 (D) The Secretary of Energy.

8 (E) The Secretary of Health and Human
9 Services.

10 (F) The Secretary of Homeland Security.

11 (G) The Secretary of Housing and Urban
12 Development.

13 (H) The Secretary of the Interior.

14 (I) The Secretary of Labor.

15 (J) The Secretary of Transportation.

16 (K) The Attorney General.

17 (L) The Administrator.

18 (M) The Director of the Office of Environ-
19 mental Justice.

20 (N) The Chairman of the Consumer Prod-
21 uct Safety Commission.

22 (O) The Chairperson of the Chemical Safe-
23 ty Board.

24 (P) The Director of the Office of Manage-
25 ment and Budget.

1 (Q) The Director of the Office of Science
2 and Technology Policy.

3 (R) The Chair of the Council on Environ-
4 mental Quality.

5 (S) The Assistant to the President for Do-
6 mestic Policy.

7 (T) The Director of the National Economic
8 Council.

9 (U) The Chairman of the Council of Eco-
10 nomic Advisers.

11 (V) Such other Federal officials as the
12 President may designate.

13 (2) FUNCTIONS.—The Working Group shall—

14 (A) report to the President through the
15 Chair of the Council on Environmental Quality
16 and the Assistant to the President for Domestic
17 Policy;

18 (B) provide guidance to Federal agencies
19 regarding criteria for identifying disproportion-
20 ately high and adverse human health or envi-
21 ronmental effects—

22 (i) on populations of color, commu-
23 nities of color, indigenous communities,
24 and low-income communities; and

1 (ii) on the basis of race, color, na-
2 tional origin, or income;

3 (C) coordinate with, provide guidance to,
4 and serve as a clearinghouse for, each Federal
5 agency with respect to the implementation and
6 updating of an environmental justice strategy
7 required under this Act, in order to ensure that
8 the administration, interpretation, and enforce-
9 ment of programs, activities, and policies are
10 carried out in a consistent manner;

11 (D) assist in coordinating research by, and
12 stimulating cooperation among, the Environ-
13 mental Protection Agency, the Department of
14 Health and Human Services, the Department of
15 Housing and Urban Development, and other
16 Federal agencies conducting research or other
17 activities in accordance with this Act;

18 (E) identify, based in part on public rec-
19 ommendations contained in Federal agency
20 progress reports, important areas for Federal
21 agencies to take into consideration and address,
22 as appropriate, in environmental justice strate-
23 gies and other efforts;

1 (F) assist in coordinating data collection
2 and maintaining and updating appropriate
3 databases, as required by this Act;

4 (G) examine existing data and studies re-
5 lating to environmental justice;

6 (H) hold public meetings and otherwise so-
7 licit public participation under paragraph (3);
8 and

9 (I) develop interagency model projects re-
10 lating to environmental justice that demonstrate
11 cooperation among Federal agencies.

12 (3) PUBLIC PARTICIPATION.—The Working
13 Group shall—

14 (A) hold public meetings or otherwise so-
15 licit public participation and community-based
16 science for the purpose of fact-finding with re-
17 spect to the implementation of this Act; and

18 (B) prepare for public review and publish
19 a summary of any comments and recommenda-
20 tions provided.

21 (c) JUDICIAL REVIEW AND RIGHTS OF ACTION.—

22 Any person may commence a civil action—

23 (1) to seek relief from, or to compel, an agency
24 action under this section (including regulations pro-
25 mulgated pursuant to this section); or

1 (2) otherwise to ensure compliance with this
2 section (including regulations promulgated pursuant
3 to this section).

4 **SEC. 5. FEDERAL AGENCY ACTIONS TO ADDRESS ENVIRON-**
5 **MENTAL JUSTICE.**

6 (a) FEDERAL AGENCY RESPONSIBILITIES.—

7 (1) ENVIRONMENTAL JUSTICE MISSION.—To
8 the maximum extent practicable and permitted by
9 applicable law, each Federal agency shall make
10 achieving environmental justice part of the mission
11 of the Federal agency by identifying, addressing,
12 and mitigating disproportionately high and adverse
13 human health or environmental effects of the pro-
14 grams, policies, and activities of the Federal agency
15 on populations of color, communities of color, indige-
16 nous communities, and low-income communities in
17 the United States (including the territories and pos-
18 sessions of the United States and the District of Co-
19 lumbia).

20 (2) NONDISCRIMINATION.—Each Federal agen-
21 cy shall conduct any program, policy, or activity that
22 substantially affects human health or the environ-
23 ment in a manner that ensures that the program,
24 policy, or activity does not have the effect of exclud-
25 ing any individual or group from participation in,

1 denying any individual or group the benefits of, or
2 subjecting any individual or group to discrimination
3 under, the program, policy, or activity because of
4 race, color, or national origin.

5 (3) STRATEGIES.—

6 (A) AGENCYWIDE STRATEGIES.—Each
7 Federal agency shall implement and update, not
8 less frequently than annually, an agencywide
9 environmental justice strategy that identifies
10 disproportionately high and adverse human
11 health or environmental effects of the pro-
12 grams, policies, spending, and other activities of
13 the Federal agency with respect to populations
14 of color, communities of color, indigenous com-
15 munities, and low-income communities, includ-
16 ing, as appropriate for the mission of the Fed-
17 eral agency, with respect to the following areas:

18 (i) Implementation of the National
19 Environmental Policy Act of 1969 (42
20 U.S.C. 4321 et seq.).

21 (ii) Implementation of title VI of the
22 Civil Rights Act of 1964 (42 U.S.C. 2000d
23 et seq.) (including regulations promulgated
24 pursuant to that title).

1 (iii) Implementation of the Robert T.
2 Stafford Disaster Relief and Emergency
3 Assistance Act (42 U.S.C. 5121 et seq.).

4 (iv) Impacts from the lack of infra-
5 structure, or from deteriorated infrastruc-
6 ture.

7 (v) Impacts from land use.

8 (vi) Impacts from climate change.

9 (vii) Impacts from commercial trans-
10 portation.

11 (B) REVISIONS.—

12 (i) IN GENERAL.—Each strategy de-
13 veloped and updated pursuant to subpara-
14 graph (A) shall identify programs, policies,
15 planning and public participation proc-
16 esses, rulemaking, agency spending, and
17 enforcement activities relating to human
18 health or the environment that may be re-
19 vised, at a minimum—

20 (I) to promote enforcement of all
21 health, environmental, and civil rights
22 laws and regulations in areas con-
23 taining populations of color, commu-
24 nities of color, indigenous commu-
25 nities, and low-income communities;

1 (II) to ensure greater public par-
2 ticipation;

3 (III) to provide increased access
4 to infrastructure;

5 (IV) to improve research and
6 data collection relating to the health
7 and environment of populations of
8 color, communities of color, indige-
9 nous communities, and low-income
10 communities, including through the
11 increased use of community-based
12 science; and

13 (V) to identify differential pat-
14 terns of use of natural resources
15 among populations of color, commu-
16 nities of color, indigenous commu-
17 nities, and low-income communities.

18 (ii) TIMETABLES.—Each strategy im-
19 plemented and updated pursuant to sub-
20 paragraph (A) shall include a timetable for
21 undertaking revisions identified pursuant
22 to clause (i).

23 (C) PROGRESS REPORTS.—Not later than
24 1 year after the date of enactment of this Act,
25 and not less frequently than once every 5 years

1 thereafter, each Federal agency shall submit to
2 Congress and the Working Group, and shall
3 publish, a progress report that includes, with
4 respect to the period covered by the report—

5 (i) a description of the current envi-
6 ronmental justice strategy of the Federal
7 agency;

8 (ii) an evaluation of the progress
9 made by the Federal agency at national
10 and regional levels regarding implementa-
11 tion of the environmental justice strategy,
12 including—

13 (I) metrics used by the Federal
14 agency to measure performance; and

15 (II) the progress made by the
16 Federal agency toward—

17 (aa) the achievement of the
18 metrics described in subclause

19 (I); and

20 (bb) mitigating identified in-
21 stances of environmental injus-
22 tice;

23 (iii) a description of the participation
24 by the Federal agency in interagency col-
25 laboration;

1 (iv) responses to recommendations
2 submitted by members of the public to the
3 Federal agency relating to the environ-
4 mental justice strategy of the Federal
5 agency and the implementation by the
6 Federal agency of this Act; and

7 (v) any updates or revisions to the en-
8 vironmental justice strategy of the Federal
9 agency, including those resulting from pub-
10 lic comments.

11 (4) PUBLIC PARTICIPATION.—Each Federal
12 agency shall—

13 (A) ensure that meaningful opportunities
14 exist for the public to submit comments and
15 recommendations relating to the environmental
16 justice strategy, progress reports, and ongoing
17 efforts of the Federal agency to incorporate en-
18 vironmental justice principles into the pro-
19 grams, policies, and activities of the Federal
20 agency;

21 (B) hold public meetings or otherwise so-
22 licit public participation and community-based
23 science from populations of color, communities
24 of color, indigenous communities, and low-in-
25 come communities for fact-finding, receiving

1 public comments, and conducting inquiries con-
2 cerning environmental justice; and

3 (C) prepare for public review and publish
4 a summary of the comments and recommenda-
5 tions provided.

6 (5) ACCESS TO INFORMATION.—Each Federal
7 agency shall—

8 (A) publish public documents, notices, and
9 hearings relating to the programs, policies, and
10 activities of the Federal agency that affect
11 human health or the environment; and

12 (B) translate and publish any public docu-
13 ments, notices, and hearings relating to an ac-
14 tion of the Federal agency as appropriate for
15 the affected population, specifically in any case
16 in which a limited English-speaking population
17 may be disproportionately affected by that ac-
18 tion.

19 (6) CODIFICATION OF GUIDANCE.—

20 (A) COUNCIL ON ENVIRONMENTAL QUAL-
21 ITY.—Notwithstanding any other provision of
22 law, sections II and III of the guidance issued
23 by the Council on Environmental Quality enti-
24 tled “Environmental Justice Guidance Under

1 the National Environmental Policy Act” and
2 dated December 10, 1997, are enacted into law.

3 (B) ENVIRONMENTAL PROTECTION AGEN-
4 CY.—Notwithstanding any other provision of
5 law, the guidance issued by the Environmental
6 Protection Agency entitled “EPA Policy on
7 Consultation and Coordination with Indian
8 Tribes: Guidance for Discussing Tribal Treaty
9 Rights” and dated February 2016 is enacted
10 into law.

11 (b) HUMAN HEALTH AND ENVIRONMENTAL RE-
12 SEARCH, DATA COLLECTION, AND ANALYSIS.—

13 (1) RESEARCH.—Each Federal agency, to the
14 maximum extent practicable and permitted by appli-
15 cable law, shall—

16 (A) in conducting environmental or human
17 health research, include diverse segments of the
18 population in epidemiological and clinical stud-
19 ies, including segments at high risk from envi-
20 ronmental hazards, such as—

21 (i) populations of color, communities
22 of color, indigenous communities, popu-
23 lations with low income, and low-income
24 communities;

25 (ii) fenceline communities; and

1 (iii) workers who may be exposed to
2 substantial environmental hazards;

3 (B) in conducting environmental or human
4 health analyses, identify multiple and cumu-
5 lative exposures; and

6 (C) actively encourage and solicit commu-
7 nity-based science, and provide to populations
8 of color, communities of color, indigenous com-
9 munities, populations with low income, and low-
10 income communities the opportunity to com-
11 ment regarding the development and design of
12 research strategies carried out pursuant to this
13 Act.

14 (2) DISPROPORTIONATE IMPACT.—To the max-
15 imum extent practicable and permitted by applicable
16 law (including section 552a of title 5, United States
17 Code (commonly known as the “Privacy Act”)), each
18 Federal agency shall—

19 (A) collect, maintain, and analyze informa-
20 tion assessing and comparing environmental
21 and human health risks borne by populations
22 identified by race, national origin, or income;
23 and

24 (B) use that information to determine
25 whether the programs, policies, and activities of

1 the Federal agency have disproportionately high
2 and adverse human health or environmental ef-
3 fects on populations of color, communities of
4 color, indigenous communities, and low-income
5 communities.

6 (3) INFORMATION RELATING TO NON-FEDERAL
7 FACILITIES.—In connection with the implementation
8 of Federal agency strategies under subsection (a)(3),
9 each Federal agency, to the maximum extent prac-
10 ticable and permitted by applicable law, shall collect,
11 maintain, and analyze information relating to the
12 race, national origin, and income level, and other
13 readily accessible and appropriate information, for
14 fenceline communities in proximity to any facility or
15 site expected to have a substantial environmental,
16 human health, or economic effect on the surrounding
17 populations, if the facility or site becomes the sub-
18 ject of a substantial Federal environmental adminis-
19 trative or judicial action.

20 (4) IMPACT FROM FEDERAL FACILITIES.—Each
21 Federal agency, to the maximum extent practicable
22 and permitted by applicable law, shall collect, main-
23 tain, and analyze information relating to the race,
24 national origin, and income level, and other readily
25 accessible and appropriate information, for fenceline

1 communities in proximity to any facility of the Fed-
2 eral agency that is—

3 (A) subject to the reporting requirements
4 under the Emergency Planning and Community
5 Right-to-Know Act of 1986 (42 U.S.C. 11001
6 et seq.), as required by Executive Order 12898
7 (42 U.S.C. 4321 note); and

8 (B) expected to have a substantial environ-
9 mental, human health, or economic effect on
10 surrounding populations.

11 (c) CONSUMPTION OF FISH AND WILDLIFE.—

12 (1) IN GENERAL.—Each Federal agency shall
13 develop, publish (unless prohibited by law), and re-
14 vise, as practicable and appropriate, guidance on ac-
15 tions of the Federal agency that will impact fish and
16 wildlife consumed by populations that principally
17 rely on fish or wildlife for subsistence.

18 (2) REQUIREMENT.—The guidance described in
19 paragraph (1) shall—

20 (A) reflect the latest scientific information
21 available concerning methods for evaluating the
22 human health risks associated with the con-
23 sumption of pollutant-bearing fish or wildlife;
24 and

1 (B) publish the risks of such consumption
2 patterns.

3 (d) MAPPING AND SCREENING TOOL.—The Adminis-
4 trator shall continue to make available to the public an
5 environmental justice mapping and screening tool (such
6 as EJScreen or an equivalent tool) that includes, at a min-
7 imum, the following features:

8 (1) Nationally consistent data.

9 (2) Environmental data.

10 (3) Demographic data, including data relating
11 to race, ethnicity, and income.

12 (4) Capacity to produce maps and reports by
13 geographical area.

14 (e) JUDICIAL REVIEW AND RIGHTS OF ACTION.—
15 Any person may commence a civil action—

16 (1) to seek relief from, or to compel, an agency
17 action under this section (including regulations pro-
18 mulgated pursuant to this section); or

19 (2) otherwise to ensure compliance with this
20 section (including regulations promulgated pursuant
21 to this section).

22 (f) INFORMATION SHARING.—In carrying out this
23 section, each Federal agency, to the maximum extent
24 practicable and permitted by applicable law, shall share
25 information and eliminate unnecessary duplication of ef-

1 forts through the use of existing data systems and cooper-
2 ative agreements among Federal agencies and with State,
3 local, and Tribal governments.

4 **SEC. 6. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY**
5 **COUNCIL.**

6 (a) ESTABLISHMENT.—The establishment by the Ad-
7 ministrator on September 30, 1993, by charter pursuant
8 to the Federal Advisory Committee Act (5 U.S.C. App.)
9 of the National Environmental Justice Advisory Council
10 (referred to in this section as the “Advisory Council”) is
11 enacted into law.

12 (b) DUTIES.—The Advisory Council may carry out
13 such duties as were carried out by the Advisory Council
14 on the day before the date of enactment of this Act, sub-
15 ject to modification by the Administrator, by regulation.

16 (c) MEMBERSHIP.—The membership of the Advisory
17 Council shall—

18 (1) be determined and appointed in accordance
19 with, as applicable—

20 (A) the charter described in subsection (a)
21 (or any subsequent amendment or revision of
22 that charter); or

23 (B) other appropriate bylaws or documents
24 of the Advisory Council, as determined by the
25 Administrator; and

1 (2) continue in effect as in existence on the day
2 before the date of enactment of this Act until modi-
3 fied in accordance with paragraph (1).

4 (d) DESIGNATED FEDERAL OFFICER.—The Director
5 of the Office of Environmental Justice of the Environ-
6 mental Protection Agency is designated as the Federal of-
7 ficer required under section 10(e) of the Federal Advisory
8 Committee Act (5 U.S.C. App.) for the Advisory Council.

9 (e) MEETINGS.—

10 (1) IN GENERAL.—The Advisory Council shall
11 meet not less frequently than 3 times each calendar
12 year.

13 (2) OPEN TO PUBLIC.—Each meeting of the
14 Advisory Council shall be held open to the public.

15 (3) DESIGNATED FEDERAL OFFICER.—The des-
16 ignated Federal officer described in subsection (d)
17 (or a designee) shall—

18 (A) be present at each meeting of the Ad-
19 visory Council;

20 (B) ensure that each meeting is conducted
21 in accordance with an agenda approved in ad-
22 vance by the designated Federal officer;

23 (C) provide an opportunity for interested
24 persons—

1 (i) to file comments before or after
2 each meeting of the Advisory Council; or

3 (ii) to make statements at such a
4 meeting, to the extent that time permits;

5 (D) ensure that a representative of the
6 Working Group and a high-level representative
7 from each regional office of the Environmental
8 Protection Agency are invited to, and encour-
9 aged to attend, each meeting of the Advisory
10 Council; and

11 (E) provide technical assistance to States
12 seeking to establish State-level environmental
13 justice advisory councils or implement other en-
14 vironmental justice policies or programs.

15 (f) RESPONSES FROM ADMINISTRATOR.—

16 (1) PUBLIC COMMENT INQUIRIES.—The Admin-
17 istrator shall provide a written response to each in-
18 quiry submitted to the Administrator by a member
19 of the public before or after each meeting of the Ad-
20 visory Council by not later than 120 days after the
21 date of submission.

22 (2) RECOMMENDATIONS FROM ADVISORY COUN-
23 CIL.—The Administrator shall provide a written re-
24 sponse to each recommendation submitted to the Ad-

1 administrator by the Advisory Council by not later
2 than 120 days after the date of submission.

3 (g) TRAVEL EXPENSES.—A member of the Advisory
4 Council may be allowed travel expenses, including per
5 diem in lieu of subsistence, at such rate as the Adminis-
6 trator determines to be appropriate while away from the
7 home or regular place of business of the member in the
8 performance of the duties of the Advisory Council.

9 (h) DURATION.—The Advisory Council shall remain
10 in existence unless otherwise provided by law.

11 **SEC. 7. ENVIRONMENTAL JUSTICE GRANT PROGRAMS.**

12 (a) IN GENERAL.—The Administrator shall continue
13 to carry out the Environmental Justice Small Grants Pro-
14 gram and the Environmental Justice Collaborative Prob-
15 lem-Solving Cooperative Agreement Program, as those
16 programs are in existence on the date of enactment of this
17 Act.

18 (b) CARE GRANTS.—The Administrator shall con-
19 tinue to carry out the Community Action for a Renewed
20 Environment grant programs I and II, as in existence on
21 January 1, 2012.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
23 authorized to be appropriated to carry out the programs
24 described in subsections (a) and (b) \$10,000,000 for each
25 of fiscal years 2020 through 2029.

1 **SEC. 8. CONSIDERATION OF CUMULATIVE IMPACTS AND**
2 **PERSISTENT VIOLATIONS IN CERTAIN PER-**
3 **MITTING DECISIONS.**

4 (a) FEDERAL WATER POLLUTION CONTROL ACT.—
5 Section 402 of the Federal Water Pollution Control Act
6 (33 U.S.C. 1342) is amended—

7 (1) by striking the section designation and
8 heading and all that follows through “Except as” in
9 subsection (a)(1) and inserting the following:

10 **“SEC. 402. NATIONAL POLLUTANT DISCHARGE ELIMI-**
11 **NATION SYSTEM.**

12 **“(a) PERMITS ISSUED BY ADMINISTRATOR.—**

13 **“(1) IN GENERAL.—Except as”;**

14 **(2) in subsection (a)—**

15 **(A) in paragraph (1)—**

16 **(i) by striking “upon condition that**
17 **such discharge will meet either (A) all”**
18 **and inserting the following: “subject to the**
19 **conditions that—**

20 **“(A) the discharge will achieve compliance**
21 **with, as applicable—**

22 **“(i) all”;**

23 **(ii) by striking “403 of this Act, or**
24 **(B) prior” and inserting the following:**

25 **“403; or**

26 **“(ii) prior”;** and

1 (iii) by striking “this Act.” and insert-
2 ing the following: “this Act; and

3 “(B) with respect to the issuance or re-
4 newal of the permit—

5 “(i) based on an analysis by the Ad-
6 ministrator of existing water quality and
7 the potential cumulative impacts (as de-
8 fined in section 501 of the Clean Air Act
9 (42 U.S.C. 7661)) of the discharge, consid-
10 ered in conjunction with the designated
11 and actual uses of the impacted navigable
12 water, there exists a reasonable certainty
13 of no harm to the health of the general
14 population, or to any potentially exposed or
15 susceptible subpopulation; or

16 “(ii) if the Administrator determines
17 that, due to those potential cumulative im-
18 pacts, there does not exist a reasonable
19 certainty of no harm to the health of the
20 general population, or to any potentially
21 exposed or susceptible subpopulation, the
22 permit or renewal includes such terms and
23 conditions as the Administrator determines
24 to be necessary to ensure a reasonable cer-
25 tainty of no harm.”; and

1 (B) in paragraph (2), by striking “assure
2 compliance with the requirements of paragraph
3 (1) of this subsection, including conditions on
4 data and information collection, reporting, and
5 such other requirements as he deems appro-
6 priate.” and inserting the following: “ensure
7 compliance with the requirements of paragraph
8 (1), including—

9 “(A) conditions relating to—

10 “(i) data and information collection;

11 “(ii) reporting; and

12 “(iii) such other requirements as the
13 Administrator determines to be appro-
14 priate; and

15 “(B) additional controls or pollution pre-
16 vention requirements.”; and

17 (3) in subsection (b)—

18 (A) in each of paragraphs (1)(D), (2)(B),
19 and (3) through (7), by striking the semicolon
20 at the end and inserting a period;

21 (B) in paragraph (8), by striking “; and”
22 at the end and inserting a period; and

23 (C) by adding at the end the following:

24 “(10) To ensure that no permit will be issued
25 or renewed if, with respect to an application for the

1 permit, the State determines, based on an analysis
2 by the State of existing water quality and the poten-
3 tial cumulative impacts (as defined in section 501 of
4 the Clean Air Act (42 U.S.C. 7661)) of the dis-
5 charge, considered in conjunction with the des-
6 ignated and actual uses of the impacted navigable
7 water, that the terms and conditions of the permit
8 or renewal would not be sufficient to ensure a rea-
9 sonable certainty of no harm to the health of the
10 general population, or to any potentially exposed or
11 susceptible subpopulation.”.

12 (b) CLEAN AIR ACT.—

13 (1) DEFINITIONS.—Section 501 of the Clean
14 Air Act (42 U.S.C. 7661) is amended—

15 (A) in the matter preceding paragraph (1),
16 by striking “As used in this title—” and insert-
17 ing “In this title:”;

18 (B) by redesignating paragraphs (2), (3),
19 and (4) as paragraphs (3), (5), and (4), respec-
20 tively, and moving the paragraphs so as to ap-
21 pear in numerical order; and

22 (C) by inserting after paragraph (1) the
23 following:

24 “(2) CUMULATIVE IMPACTS.—The term ‘cumu-
25 lative impacts’ means any exposure, public health or

1 environmental risk, or other effect occurring in a
2 specific geographical area, including from an emis-
3 sion or release—

4 “(A) including—

5 “(i) environmental pollution re-
6 leased—

7 “(I)(aa) routinely;

8 “(bb) accidentally; or

9 “(cc) otherwise; and

10 “(II) from any source, whether
11 single or multiple; and

12 “(ii) as assessed based on the com-
13 bined past, present, and reasonably fore-
14 seeable emissions and discharges affecting
15 the geographical area; and

16 “(B) evaluated taking into account sen-
17 sitive populations and socioeconomic factors,
18 where applicable.”.

19 (2) PERMIT PROGRAMS.—Section 502(b) of the
20 Clean Air Act (42 U.S.C. 7661a(b)) is amended—

21 (A) in paragraph (5)—

22 (i) in subparagraphs (A) and (C), by
23 striking “assure” each place it appears and
24 inserting “ensure”; and

1 (ii) by striking subparagraph (F) and
2 inserting the following:

3 “(F) ensure that no permit will be issued or re-
4 newed, as applicable, if—

5 “(i) with respect to an application for a
6 permit or renewal of a permit for a major
7 source, the permitting authority determines
8 under paragraph (9)(A)(i)(II)(bb) that the
9 terms and conditions of the permit or renewal
10 would not be sufficient to ensure a reasonable
11 certainty of no harm to the health of the gen-
12 eral population, or to any potentially exposed or
13 susceptible subpopulation, of the applicable cen-
14 sus tracts or Tribal census tracts (as those
15 terms are defined by the Director of the Bureau
16 of the Census); or

17 “(ii) the Administrator objects to the
18 issuance of the permit in a timely manner
19 under this title.”; and

20 (B) in paragraph (9)—

21 (i) in the fourth sentence, by striking
22 “Such permit revision” and inserting the
23 following:

24 “(iii) TREATMENT AS RENEWAL.—A
25 permit revision under this paragraph”;

1 (ii) in the third sentence, by striking
2 “No such revision shall” and inserting the
3 following:

4 “(ii) EXCEPTION.—A revision under
5 this paragraph shall not”;

6 (iii) in the second sentence, by strik-
7 ing “Such revisions” and inserting the fol-
8 lowing:

9 “(B) REVISION REQUIREMENTS.—

10 “(i) DEADLINE.—A revision described
11 in subparagraph (A)(ii)”;

12 (iv) by striking the paragraph des-
13 ignation and all that follows through “shall
14 require” in the first sentence and inserting
15 the following:

16 “(9) MAJOR SOURCES.—

17 “(A) IN GENERAL.—With respect to any
18 permit or renewal of a permit, as applicable, for
19 a major source, a requirement that the permit-
20 ting authority shall—

21 “(i) in determining whether to issue
22 or renew the permit—

23 “(I) evaluate the potential cumu-
24 lative impacts of the proposed major
25 source, as described in the applicable

1 cumulative impacts analysis submitted
2 under section 503(b)(3);

3 “(II) if, due to those potential
4 cumulative impacts, the permitting
5 authority cannot determine that there
6 exists a reasonable certainty of no
7 harm to the health of the general pop-
8 ulation, or to any potentially exposed
9 or susceptible subpopulation, of any
10 census tracts or Tribal census tracts
11 (as those terms are defined by the Di-
12 rector of the Bureau of the Census)
13 located in, or immediately adjacent to,
14 the area in which the major source is,
15 or is proposed to be, located—

16 “(aa) include in the permit
17 or renewal such terms and condi-
18 tions (including additional con-
19 trols or pollution prevention re-
20 quirements) as the permitting
21 authority determines to be nec-
22 essary to ensure a reasonable cer-
23 tainty of no harm; or

24 “(bb) if the permitting au-
25 thority determines that terms

1 and conditions described in item
2 (aa) would not be sufficient to
3 ensure a reasonable certainty of
4 no harm, deny the issuance or re-
5 newal of the permit;

6 “(III) determine whether the ap-
7 plicant is a persistent violator, based
8 on such criteria relating to the history
9 of compliance by an applicant with
10 this Act as the Administrator shall es-
11 tablish by not later than 180 days
12 after the date of enactment of the En-
13 vironmental Justice Act of 2021;

14 “(IV) if the permitting authority
15 determines under subclause (III) that
16 the applicant is a persistent violator
17 and the permitting authority does not
18 deny the issuance or renewal of the
19 permit pursuant to subclause
20 (V)(bb)—

21 “(aa) require the applicant
22 to submit a redemption plan that
23 describes—

24 “(AA) if the applicant
25 is not compliance with this

1 Act, measures the applicant
2 will carry out to achieve that
3 compliance, together with an
4 approximate deadline for
5 that achievement;

6 “(BB) measures the
7 applicant will carry out, or
8 has carried out to ensure the
9 applicant will remain in
10 compliance with this Act,
11 and to mitigate the environ-
12 mental and health effects of
13 noncompliance; and

14 “(CC) the measures the
15 applicant has carried out in
16 preparing the redemption
17 plan to consult or negotiate
18 with the communities af-
19 fected by each persistent vio-
20 lation addressed in the plan;
21 and

22 “(bb) once such a redemp-
23 tion plan is submitted, determine
24 whether the plan is adequate to
25 ensuring that the applicant—

1 “(AA) will achieve com-
2 pliance with this Act expedi-
3 tiously;

4 “(BB) will remain in
5 compliance with this Act;

6 “(CC) will mitigate the
7 environmental and health ef-
8 fects of noncompliance; and

9 “(DD) has solicited and
10 responded to community
11 input regarding the redemp-
12 tion plan; and

13 “(V) deny the issuance or re-
14 newal of the permit if the permitting
15 authority determines that—

16 “(aa) the redemption plan
17 submitted under subclause
18 (IV)(aa) is inadequate; or

19 “(bb)(AA) the applicant has
20 submitted a redemption plan on
21 a prior occasion, but continues to
22 be a persistent violator; and

23 “(BB) no indication exists
24 of extremely exigent cir-

1 cumstances excusing the per-
2 sistent violations; and

3 “(ii) in the case of such a permit with
4 a term of 3 years or longer, require in ac-
5 cordance with subparagraph (B).”.

6 (3) PERMIT APPLICATIONS.—Section 503(b) of
7 the Clean Air Act (42 U.S.C. 7661b(b)) is amended
8 by adding at the end the following:

9 “(3) MAJOR SOURCE ANALYSES.—The regulations
10 required by section 502(b) shall include a requirement
11 that an applicant for a permit or renewal of a permit for
12 a major source shall submit, together with the compliance
13 plan required under this subsection, a cumulative impacts
14 analysis for each census tract or Tribal census tract (as
15 those terms are defined by the Director of the Bureau of
16 the Census) located in, or immediately adjacent to, the
17 area in which the major source is, or is proposed to be,
18 located that analyzes—

19 “(A) community demographics and locations of
20 community exposure points, such as schools, day
21 care centers, nursing homes, hospitals, health clinics,
22 places of religious worship, parks, playgrounds, and
23 community centers;

24 “(B) air quality and the potential effect on that
25 air quality of emissions of air pollutants (including

1 pollutants listed under section 108 or 112) from the
2 proposed major source, including in combination
3 with existing sources of pollutants;

4 “(C) the potential effects on soil quality and
5 water quality of emissions of lead and other air pol-
6 lutants that could contaminate soil or water from
7 the proposed major source, including in combination
8 with existing sources of pollutants; and

9 “(D) public health and any potential effects on
10 public health of the proposed major source.”.

11 **SEC. 9. IMPLIED RIGHTS OF ACTION AND COMMON LAW**
12 **CLAIMS.**

13 Section 505 of the Federal Water Pollution Control
14 Act (33 U.S.C. 1365) is amended by adding at the end
15 the following:

16 “(i) EFFECT ON IMPLIED RIGHTS OF ACTION AND
17 COMMON LAW CLAIMS.—

18 “(1) DEFINITION OF COVERED ACT.—In this
19 subsection:

20 “(A) IN GENERAL.—The term ‘covered
21 Act’ means—

22 “(i) this Act;

23 “(ii) the Federal Insecticide, Fun-
24 gicide, and Rodenticide Act (7 U.S.C. 136
25 et seq.);

1 “(iii) the Surface Mining Control and
2 Reclamation Act of 1977 (30 U.S.C. 1201
3 et seq.);

4 “(iv) the Marine Protection, Research,
5 and Sanctuaries Act of 1972 (33 U.S.C.
6 1401 et seq.);

7 “(v) the Safe Drinking Water Act (42
8 U.S.C. 300f et seq.);

9 “(vi) the Solid Waste Disposal Act
10 (42 U.S.C. 6901 et seq.);

11 “(vii) the Clean Air Act (42 U.S.C.
12 7401 et seq.);

13 “(viii) the Comprehensive Environ-
14 mental Response, Compensation, and Li-
15 ability Act of 1980 (42 U.S.C. 9601 et
16 seq.); and

17 “(ix) any other Act administered by
18 the Administrator.

19 “(B) INCLUSIONS.—The term ‘covered
20 Act’ includes any provision of an Act described
21 in subparagraph (A) the date of enactment of
22 which is after the date of enactment of this
23 subsection, unless that provision is specifically
24 excluded from this subsection.

1 “(2) EFFECT.—Nothing in a covered Act pre-
2 cludes the right to bring an action—

3 “(A) under section 1979 of the Revised
4 Statutes (42 U.S.C. 1983); or

5 “(B) that is implied under—

6 “(i) a covered Act; or

7 “(ii) common law.

8 “(3) APPLICATION.—Nothing in this section
9 precludes the right to bring an action under any
10 provision of law that is not a covered Act.”.

11 **SEC. 10. PRIVATE RIGHTS OF ACTION FOR DISCRIMINA-**
12 **TORY PRACTICES.**

13 (a) RIGHT OF ACTION.—Section 602 of the Civil
14 Rights Act of 1964 (42 U.S.C. 2000d–1) is amended—

15 (1) by inserting “(a)” before “Each Federal de-
16 partment and agency which is empowered”; and

17 (2) by adding at the end the following:

18 “(b) Any person aggrieved by the failure of a covered
19 entity to comply with this title, including any regulation
20 promulgated pursuant to this title, may bring a civil action
21 in any Federal or State court of competent jurisdiction
22 to enforce such person’s rights under this title.”.

23 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—This section, including the
2 amendments made by this section, takes effect on
3 the date of enactment of this Act.

4 (2) APPLICATION.—This section, including the
5 amendments made by this section, applies to all ac-
6 tions or proceedings pending on or after the date of
7 enactment of this Act.

8 **SEC. 11. SEVERABILITY.**

9 If any provision of this Act, or the application of such
10 a provision to any person or circumstance, is determined
11 to be invalid, the remainder of this Act and the application
12 of the provision to other persons or circumstances shall
13 not be affected.