



Environmental Justice Activities In Louisiana

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OUTLINE OF TOPICS

- Overview
 - Title VI of the Civil Rights Act
 - EPA's EJ Regulations
 - Executive Orders
- Significant Developments In Louisiana
 - Louisiana v. EPA
 - FG LA (Formosa) Permit Decision
 - Inclusive Louisiana, *et al* v St. James Parish

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Civil Rights Act of 1964 – Title VI

- Section 601: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. §2000d.
- *Alexander v. Sandoval*, 532 U.S. 275 (2001):
 - Private individuals may sue to enforce §601
 - Directly reaches only intentional discrimination



Civil Rights Act of 1964 – Title VI

- Section 602: Each Federal department and agency which extends Federal financial assistance to any program or activity “is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. §2000d-1.
- *Alexander v. Sandoval*, 532 U.S. 275 (2001):
 - “Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under §602.”
- Some question whether Section 602 regulations may address non-intentional discrimination
 - Most assume they may, but Supreme Court statements seem to suggest otherwise



EPA Regulations – 40 CFR Part 7

- 40 CFR §7.15
 - Applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance
- General prohibition - 40 CFR §7.30
 - No person shall be excluded from participation in, denial of benefits of, and discrimination under any program or activity receiving EPA assistance on the basis of race, color, or national origin.
- Specific prohibitions - 40 CFR §7.30
 - Recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination
 - Recipient shall not choose “a site or location of a facility that has the purpose or effect of ... subjecting [persons] to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin.”



EPA Regulations – 40 CFR Part 7

- Complaint process
 - EPA conducts “preliminary investigation” of a complaint
 - May accept, reject, or refer
 - Will attempt to resolve through an Informal Resolution Agreement
 - EPA may issue Preliminary Findings
 - Will include recommendations to achieve compliance
 - Recipient may file a response to complaint or Preliminary Findings
- Finding of non-compliance
 - Recipient can agree with findings, take corrective actions
 - Recipient can contest the findings
- Remedies
 - Terminate or refuse to award or to continue assistance
 - Recipient can request a hearing
 - Outcome subject to judicial review under APA
 - Use any other means authorized by law to get compliance
 - Includes referral to DOJ
- Filing a complaint “does not suspend an issued permit.” 65 FR 39651 (6/27/00)



Executive Orders

EO 13985 - Jan. 20, 2021



Federal Register / Vol. 86, No. 14 / Monday, January 25, 2021 / Presidential Documents 7009

Presidential Documents

Executive Order 13985 of January 20, 2021

Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Policy. Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

It is therefore the policy of my Administration 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. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

By advancing equity across the Federal Government, we can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone. For example, an analysis shows that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional \$5 trillion in gross domestic product in the American economy over the next 5 years. The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential. Consistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

Sec. 2. Definitions. For purposes of this order: (a) The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

- Nation deserves an “ambitious whole-of-government equity agenda”
- The term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment
- Requires
 - An equity assessment in federal agencies
 - Allocation of federal resources to advance fairness
 - Promotion of equitable delivery of government benefits and equitable opportunities



Executive Orders

Federal Register / Vol. 86, No. 19 / Monday, February 1, 2021 / Presidential Documents

7619

Presidential Documents

Executive Order 14008 of January 27, 2021

Tackling the Climate Crisis at Home and Abroad

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART I—PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY

Section 101. Policy. United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.

Sec. 102. Purpose. This order builds on and reaffirms actions my Administration has already taken to place the climate crisis at the forefront of this Nation's foreign policy and national security planning, including submitting the United States instrument of acceptance to rejoin the Paris Agreement. In implementing—and building upon—the Paris Agreement's three overarching objectives (a safe global temperature, increased climate resilience, and financial flows aligned with a pathway toward low greenhouse gas emissions and climate-resilient development), the United States will exercise its leadership to promote a significant increase in global climate ambition to meet the climate challenge. In this regard:

(a) I will host an early Leaders' Climate Summit aimed at raising climate ambition and making a positive contribution to the 26th United Nations Climate Change Conference of the Parties (COP26) and beyond.

(b) The United States will reconvene the Major Economies Forum on Energy and Climate, beginning with the Leaders' Climate Summit. In cooperation with the members of that Forum, as well as with other partners as appropriate, the United States will pursue green recovery efforts, initiatives to advance the clean energy transition, sectoral decarbonization, and alignment of financial flows with the objectives of the Paris Agreement, including with respect to coal financing, nature-based solutions, and solutions to other climate-related challenges.

EO 14008 (Jan. 27, 2021)

- Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities 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.
- Establishes the White House Environmental Justice Advisory Council
- Provides advice to White House “on how to increase the Federal Government’s efforts to address current and historic environmental injustice
- Creates Justice40 Initiative
- Goal of “40 percent of the overall benefits flow to disadvantaged communities”



Louisiana v. EPA

01R-22-R6	Louisiana Dept. of Envir. Quality (St. John the Baptist Parish)	01/20/2022	LA	06	Title VI: Race
02R-22-R6	Louisiana Dept. of Health	01/20/2022	LA	06	Title VI: Race
04R-22-R6	Louisiana Dept. of Envir. Quality (St. James Parish)	02/02/2022	LA	06	Title VI: Race



Louisiana v. EPA

01R-22-R6	Louisiana Dept. of Envir. Quality (St. John the Baptist Parish)	01/20/2022	LA	06	Title VI: Race
02R-22-R6	Louisiana Dept. of Health	01/20/2022	LA	06	Title VI: Race
04R-22-R6	Louisiana Dept. of Envir. Quality (St. James Parish)	02/02/2022	LA	06	Title VI: Race

- Against LDEQ

-St. John Parish: Generally, relates to chloroprene emissions from the Denka facility and a failure by LDEQ to review Denka's renewal application and strengthen emission controls

-St. James Parish: Generally, relates to air permitting decisions in the Industrial Corridor and LDEQ's decision to issue air permits to Formosa's petrochemical facility

- Against LDH

-St. John Parish: Generally, relates to a failure by the agency to communicate health risks related to chloroprene emissions from the Denka facility



Louisiana v. EPA



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

Office of Environmental Justice and External Civil Rights

October 12, 2022

In Reply Refer to:

EPA Complaint Nos. 01R-22-R6, 02R-22-R6, and 04R-22-R6

Dr. Chuck Carr Brown, Secretary
Louisiana Department of Environmental Quality
602 North Fifth Street
Baton Rouge, LA 70802
officesec@la.gov

Dr. Courtney N. Phillips, Secretary
Louisiana Department of Health
628 North Fourth Street
Baton Rouge, LA 70802
courtney.phillips@la.gov

Re: Letter of Concern

Letter of Concern

-Not mentioned or included in EPA's complaint resolution procedures

-Initial investigation raised concerns that the agencies "methods of administering their programs and activities related to air pollution control and health risk mitigation and communication ... may have an adverse and disparate impact on Black residents who live and/or attend school near Denka, who live near the proposed location for the Formosa facility, and those who live in the Industrial Corridor."



Louisiana v. EPA

Case 2:23-cv-00692-JDC-TPL Document 1 Filed 05/24/23 Page 1 of 57 PageID #: 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

THE STATE OF LOUISIANA,
By and through its Attorney General, JEFF
LANDRY;

PLAINTIFF,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY;

MICHAEL S. REAGAN, in his official
capacity as Administrator of the U.S. Environ-
mental Protection Agency;

LILIAN S. DORKA, in her official
capacity as Director of EPA's External Civil
Rights Compliance Office;

The UNITED STATES DEPARTMENT OF
JUSTICE;

MERRICK GARLAND, in his official capacity
as Attorney General of the United States of
America;

JOSEPH R. BIDEN, JR., in his official
capacity as President of the United
States; and

The UNITED STATES OF AMERICA;

DEFENDANTS.

CIVIL ACTION NO. _____

Allegations Regarding Title VI and Part 7

-Section 601 does not provide any basis for imposing disparate-impact-based mandates because it only addresses intentional discrimination.

-Section 602 only allows agencies to adopt regulations that “effectuate” the provisions of Section 601

-As a result, Section 602 does not provide authority for disparate-impact requirements, such as those in EPA’s Part 7 regulations

-Therefore, EPA lacks authority under Section 602 to impose disparate-impact-based requirements



Louisiana v. EPA



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

Office of Environmental Justice and External Civil Rights

June 27, 2023

In Reply Refer to:

EPA Complaint Nos. 01R-22-R6 and 04R-22-R6

Roger Gingles, Secretary
Louisiana Department of Environmental Quality
602 North Fifth Street
Baton Rouge, LA 70802
officesec@la.gov
roger.gingles@la.gov

Re: Administrative Closure EPA Complaint Nos. 01R-22-R6 and 04R-22-R6



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

Office of Environmental Justice and External Civil Rights

June 27, 2023

In Reply Refer to:

EPA Complaint No. 02R-22-R6

Stephen Russo, Secretary
Louisiana Department of Health
P.O. Box 629
Baton Rouge, LA 70821-0629
stephen.russo@la.gov

Re: Administrative Closure of EPA Complaint No. 02R-22-R6

Reasons for Administrative Closure

- EPA has taken actions against Denka (CAFO to lower chloroprene emissions and a civil suit for imminent and substantial endangerment)
- EPA will be issuing a new rule for ethylene oxide and chloroprene
- EPA will conduct a cumulative impact assessment
- State court action (permit appeal) pending regarding Formosa
- Working with both agencies to address procedural safeguards



Louisiana v. EPA

Case 2:23-cv-00692-JDC-TPL Document 50 Filed 01/23/24 Page 1 of 2 PageID #: 3076

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

STATE OF LOUISIANA

CASE NO. 2:23-CV-00692

VERSUS

JUDGE JAMES D. CAIN, JR.

**U S ENVIRONMENTAL PROTECTION
AGENCY ET AL**

MAGISTRATE JUDGE KAY

PRELIMINARY INJUNCTION

Pursuant to the Memorandum Ruling and Judgment of this date,

IT IS ORDERED, ADJUDGED, AND DECREED that pursuant to Federal Rule of Civil Procedure 65, the State of Louisiana's Motion for Preliminary Injunction is **GRANTED** as follows:

Defendants, the United States Environment Protection Agency ("EPA"), Michael Regan, Lilian Dorka, U S Department of Justice ("DOJ"), Merrick Garland, United States of America, are hereby preliminarily ENJOINED from

- (1) Imposing or enforcing any disparate impact based requirements against the State of Louisiana or any State agency under Title VI, and
- (2) Imposing or enforcing any Title VI based requirements upon the State of Louisiana or any State agency under Title VI, that are not both
 - a. Ratified by the President, as required by 42 U.S.C. § 2000d-1, and
 - b. Based upon requirements found within the four corners of EPA's disparate impact regulations, 40 C. F. R. § 7.35(b),(c).



Louisiana v. EPA

Case 2:23-cv-00692-JDC-TPL Document 50 Filed 01/23/24 Page 1 of 2 PageID #: 3076

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

STATE OF LOUISIANA

CASE NO. 2:23-CV-00692

VERSUS

JUDGE JAMES D. CAIN, JR.

**U S ENVIRONMENTAL PROTECTION
AGENCY ET AL**

MAGISTRATE JUDGE KAY

PRELIMINARY INJUNCTION

Pursuant to the Memorandum Ruling and Judgment of this date,

IT IS ORDERED, ADJUDGED, AND DECREED that pursuant to Federal Rule

Pursuant to a preliminary injunction issued by the U.S. District Court for the Western District of Louisiana on January 23, 2024, EPA will not impose or enforce any disparate-impact or cumulative-impact-analysis requirements under Title VI against the State of Louisiana or its state agencies.

Defendants, the United States Environment Protection Agency ("EPA"), Michael Regan, Lilian Dorka, U S Department of Justice ("DOJ"), Merrick Garland, United States of America, are hereby preliminarily ENJOINED from

(1) Imposing or enforcing any disparate impact based requirements against the State of Louisiana or any State agency under Title VI, and

(2) Imposing or enforcing any Title VI based requirements upon the State of Louisiana or any State agency under Title VI, that are not both

- a. Ratified by the President, as required by 42 U.S.C. § 2000d-1, and
- b. Based upon requirements found within the four corners of EPA's disparate impact regulations, 40 C. F. R. § 7.35(b),(c).



FG LA Permit Decision



- \$9.4B petrochemical facility in St. James Parish
 - PSD Permit and 14 Title V permits issued by LDEQ
 - LDEQ issued 182-page Basis for Decision and Response to Comments
- LDEQ is designated as “public trustee” of the environment
 - Applicant must submit an Environmental Assessment Statement for major permits
 - LDEQ must balance environmental costs and social/economic benefits
- LDEQ considers environmental justice in BFD / RTC and permit decisions
 - But, never as part of traditional “public trustee” balancing process
- Appellate court decision: “Also included within DEQ's decision-making analysis under the public trust doctrine is consideration of the issue of environmental justice.”
 - Consideration of social/economic factors “broad enough to include an analysis of environmental justice.”
- First explicit judicial statement to that effect
 - Court found that LDEQ had more than adequately addressed EJ issues in BFD/RTC
- Result: EJ must be considered by LDEQ in major permitting decisions



Inclusive Louisiana, *et al* v. St. James Parish

- Complaint in federal court against St. James Parish
 - 151 pages with over 600 paragraphs
 - Allegations include references as far back as 1685
 - Land Use Plan passed in 2014
 - Relates to land use decisions (before and after LUP) allowing industrial facilities to locate in predominately Black districts (District 4 and District 5)

Number	Claim
I	13th Amendment (Badges and Incidences of Slavery)
II	14th Amendment (Equal Protection)
III	14th Amendment (Substantive Due Process)
IV	1982 (Decrease property values)
V	RLUIPA (Substantial Burden)
VI	RLUIPA (Discrimination)
VII	La. Constitution (Cultural Origins)



Inclusive Louisiana, *et al* v. St. James Parish

- District court disposition of claims – dismissed with prejudice

No	Claim	Disposition
I	13th Amendment (Badges and Incidences of Slavery)	Time-Barred
II	14th Amendment (Equal Protection)	Time-Barred
III	14th Amendment (Substantive Due Process)	Time-Barred
IV	1982 (Decrease property values)	Time-Barred
V	RLUIPA (Substantial Burden)	Standing
VI	RLUIPA (Discrimination)	Time-Barred
VII	La. Constitution (Cultural Origins)	Standing

- District court decision appealed to Fifth Circuit
 - Pending



Conclusions

- Environmental justice is rooted in Title VI
Title VI has limitations
EPA's EJ authority would also seem duly limited
- Extent of EPA's authority questioned when it sought to enforce its disparate impact regulations
Are EPA's disparate impact regulations valid?
Can EPA force corrective actions on state agencies?
- May be additional ways to address EJ in permitting
NEPA-like public trust analysis?
- Still, civil rights claims based on US Constitution can be made



QUESTIONS??

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Presentation available at

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