

# Who Raises Environmental Justice in Rulemaking?

## Do Agencies respond?

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1994

“Addressing disproportionately high and adverse human health or environmental effects of programs, policies, and activities on minority populations and low-income populations.”



2002

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected.

2002

Comment: Heather McCausland, Alaska Community Action on Toxics (ACAT):

“The amount of methyl-mercury and other bio accumulative chemicals consumed by Alaskans (especially Alaskan Natives) could potentially be much higher than is assumed...The Alaska Native mortality rate for babies which according to the CDC is 70% higher than the United States average. Indigenous Arctic & Alaskan Native populations are some of the most polluted populations in the world (<http://www.amap.no/>). Global transport & old military sites contaminate us too”

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EO 12898 requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,<sup>12</sup> agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that “appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.” (EPA, 1998)

In accordance with EO 12898, the Agency has considered whether the final rule may have disproportionate negative impacts on minority or low income populations. The Agency expects the final rule to lead to beneficial reductions in air pollution and exposures generally with a small negative impact through increased utility bills. The increase in the price for electric power is estimated to be 0.2 percent of retail electricity prices and is shared among all members of society equally and, thus, is not considered to be a disproportionate impact on minority populations and low-income

source of protein), and another analytical approach based on total consumption levels (*i.e.*, those anglers who eat two to three fish meals per day are assumed to be subsistence). Our analysis shows that the final rule will result in total benefits (under a scenario of no threshold on effects at low doses of Hg) accrued to potentially prenatally exposed children in the homes of subsistence anglers of \$454,000 to \$573,000 in 2020 when using a 3 percent discount rate (or \$212,000 to \$391,000 when using a 7 percent discount rate).

We also conducted case studies of the potential benefits of CAMR to a Native American population and an Asian American population located in Wisconsin, Minnesota, and (for one of the case studies) Michigan. The Agency was unable to transfer the results of these case studies to the rest of the Native American and Asian American populations in the U.S. due to missing data elements for analysis in other parts of the country.

In the case study of the Chippewa in Minnesota, Wisconsin, and Michigan, we determined that this group would accrue total benefits (under an assumption of no threshold on effects at low doses of Hg) of \$6,300 to \$6,700 in 2020 when using a 3 percent discount rate across the group as a whole (for

consumption rates for Native American subsistence populations to the maximum expected Hg fish-tissue concentration changes predicted to result from CAMR within regions of the 37-State study area with recognized Native American populations. The fish consumption rates used in this sensitivity analysis were based on comments received through the NODA characterizing high-end consumption for the Ojibwe Tribes in Wisconsin and Minnesota. These values represent very high consumption rates exceeding the high-end (95th percentile) consumption rates recommended by the EPA for Native American subsistence populations and consequently are appropriate for a sensitivity analysis. The sensitivity analysis suggested that, although Native American subsistence populations (and other high fish consuming populations) might experience relatively larger health benefits from the final rule compared with general recreational angler, the absolute degree of health benefits involved are relatively low (*i.e.*, less than a 1.0 IQ point change per fisher for any of the locations modeled). This sensitivity analysis also provided coverage for the Hmong population modeled for the RIA, and the conclusions cited above regarding

2017

## K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this proposed action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The CPP anticipated reductions in CO<sub>2</sub> emissions, as well as lower concentrations of PM<sub>2.5</sub> and ozone due to changes in EGU emissions.

The EPA conducted a proximity analysis for the CPP and identified that low-income and minority communities located in proximity to EGUs may have experienced an improvement in air quality as a result of the emissions reductions. However, the EPA did not address the potential distribution of compliance costs associated with the CPP.

The RIA that accompanies this document of proposed rulemaking discusses how the potential impacts of this proposed action might be distributed across the population, as the impacts are not expected to be experienced uniformly by different individuals, communities, or industry sectors.

The distribution of avoided compliance costs associated with this action depends on how the degree to which costs would have been passed through to consumers. As discussed in the RIA, this proposal is expected to result in lower electricity prices. Low-income households typically spend a greater share of their household income on energy, and to the extent that this action reduces energy costs, those low-income households will experience lower energy bills. This result is complicated by expectations regarding how energy efficiency programs may have been adopted under the CPP. However, the EPA does not know how states would have implemented those programs and, therefore, the impact of those program on low-income households. The overall distribution of the avoided compliance costs associated with this action is uncertain, but may result in lower household energy bills for low-income households.

With respect to the forgone benefits associated with this action, the EPA conducted a proximity analysis for

# Broader Argument

## Rulemaking constructs

- a political community of “relevant stakeholders”
- contested definitions of the public good and minority rights
- “appropriate” criteria to evaluate policy consequences

# Why would comments matter?

Direct: information & framing

- Facts (Wagner 1993)
- Minority opinion (Gillion 2013)
- Appropriateness (March and Olson 2004)

Indirect: incentives & threats

- Congressional or Presidential Attention (Yackee 2006, Yaver 2017)
- Litigation (Coglanese 2001)



# Why do we care?

Deserving groups

Criteria for allocating resources and protection

Voice vs. information

# Why Focus on Environmental Justice?

Increasing joint organizing (e.g. Checker 2005)

Relatively unambiguous

# Public Comments

1	"...remain healthy to eat as a matter of equal protection and environmental justice, as well as, the federal government's trust responsibility toward the Ojibwe...	Wayne Dupuis, Environmental Program Manager, Fond du Lac Band of Lake Superior Chippewa
1	"...Latino and low-income, evinced a double standard that raises serious environmental justice concerns. Nor did EPA protect the fetus and young children from neurodevelopmental...	Patti A. Goldman, et al. Earthjustice, on behalf of Pesticide Action Network et al.
1	"...Latino and low-income, evinced a double standard that raises serious environmental justice concerns. Nor did EPA protect the fetus and young children from neurodevelopmental...	Patti A. Goldman, et al., Earthjustice on behalf of Pesticide Action Network et al.
1	"...that removes corporate privilege and creates jobs, that seeks social and environmental justice by eliminating the ability of corporations to manipulate the system. I understand...	Lee Anderson, AFL-CIO
1	"...impact to historic properties, impact to threatened and endangered species, and environmental justice impacts. 228 Notably absent from this list is impacts to groundwater and...	Kurt D. Ebersbach, Senior Attorney, Southern Environmental Law Center et al.
1	"...wastewater pollution alone. 13 3.2 POWER PLANT WASTEWATER IS AN ENVIRONMENTAL JUSTICE ISSUE The water pollution caused by coal plants does not affect everyone...	Casey Austin Roberts, Environmental Law Program, Sierra Club et al.
106	"...not happen. EO 13007, sacred sites, didn't happen. EO 12898, environmental justice for low income and minority communities, didn't happen. EO 12875, federal government...	Tribal Comment on Monuments Designations
1	"...their Indigenous Nations and communities toward ecologically sustainable livelihoods, long-denied environmental justice, and full restoration and protection of the Sacred Fire of their traditions. Established in...	6376
51762	"...coming generations, and some hold lands sacred to Native Americans. Pursuing Environmental Justice is a hallmark of our democracy in action. Thank you, Tom Connor...	Comment on FR Doc # 2017-09490

# Public Comments

"...the mining industry: (1) surface impoundments (a new priority); and (2) environmental justice (a new priority). NMA is a national trade association representing the producers...	President, Regulatory Affairs, National Mining Association (NMA)
"...risk assessment to evaluate the risks of various stressors present in environmental justice populations, as detailed in "Quantifying Exposure and Risk Disproportionality in Environmental Justice..."	Peter Webster, General Counsel US, Barrick Gold
"...adverse effects upon subsistence uses and resources resulting from such actions. Environmental Justice In addition to ANILCA, Executive Order 12898 on Environmental Justice calls for...	Earthworks
"...1986 "www.gbrw.org Great Basin Resource Watch is a regional environmental justice organization dedicated to protecting the health and well being of the land..."	Earthworks
"...that Rio Tinto Kennecott exemplifies the "EPA, Region 8 Enforcement Compliance & Environmental Justice Division RCRA Compliance Evaluation Report, Kennecott Utah Copperton Concentrator, 3(Mar. 27..."	Rich Borden, Vice President, Rio Tinto America Inc.
"...viz a viz environmental damages is widely considered a failure of environmental justice. There has been no systematic accounting of actual damages by the Guyana..."	Earthworks
"...waters of New Mexico, as well as to social, economic and environmental justice and restoration. Detailed information can be found on our website at http..."	Rachel Conn, Projects Director, Amigos Bravos

## Public Comments

**Figure:** Common Words in Online Comments (Left) and Attachments (Right)



# Procedure

- ① Retrieve all drafts, comments, and rules mentioning “environmental justice”
- ② Retrieve all draft and final rules from all agencies in above sample
- ③ Match rule drafts, comments, and final rules
- ④ Predict commenter race using census data
- ⑤ Logit Regression

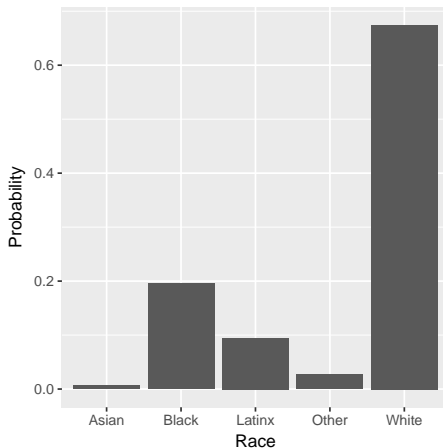
$$EJin\hat{Final} = \begin{cases} 1 & \text{if } \beta_0 + \beta_1 EJinDraft + \beta_2 EJinComments + \\ & \beta_3 TotalComments + \epsilon > 0 \\ 0 & \text{else} \end{cases}$$

## Second-order Representation

	Organization	Comments	Rules
1	Earthjustice	1114782	28
2	Natural Resources Defense Council	340554	8
3	Sierra Club	349841	5
4	Alliance for Climate Protection	253867	5
5	WE ACT for Environmental Justice	2402	3
6	CREDO	112879	2
7	Union of Concerned Scientists	43559	2
8	Earthworks	308	2
9	Communities for a Better Environment	21	2
10	Southern Company	8	2
11	Move On	165948	1
12	Care2	70450	1
13	The Pew Charitable Trusts	63769	1
14	Hudson-Environmental Action	35000	1
15	Democracy for America	4426	1

# Commenter Race

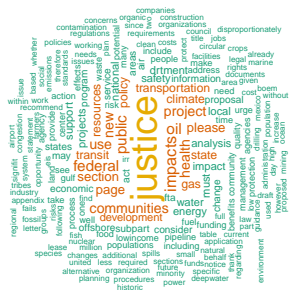
Figure: Estimated Racial Distribution from Census Surnames





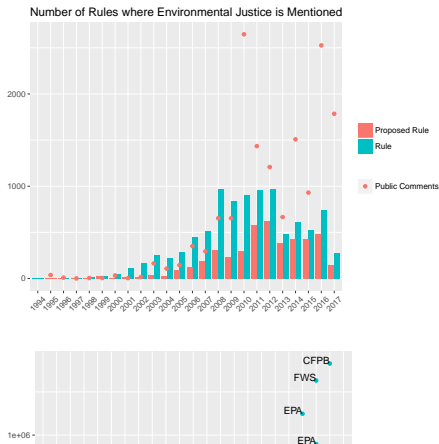
## Commenter Race

Figure: Common Words by Race



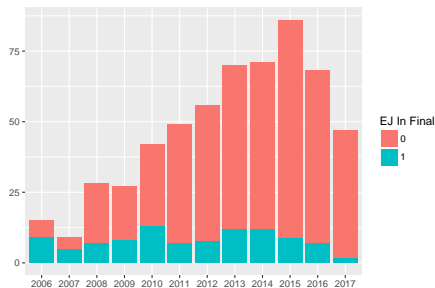
# Public Comments

**Figure:** Number of Rules where Environmental Justice Appears in the Record (Left) and Number of Comments per Notice or Proposed Rule (Right). Text indicates the agency for the most commented on rules.



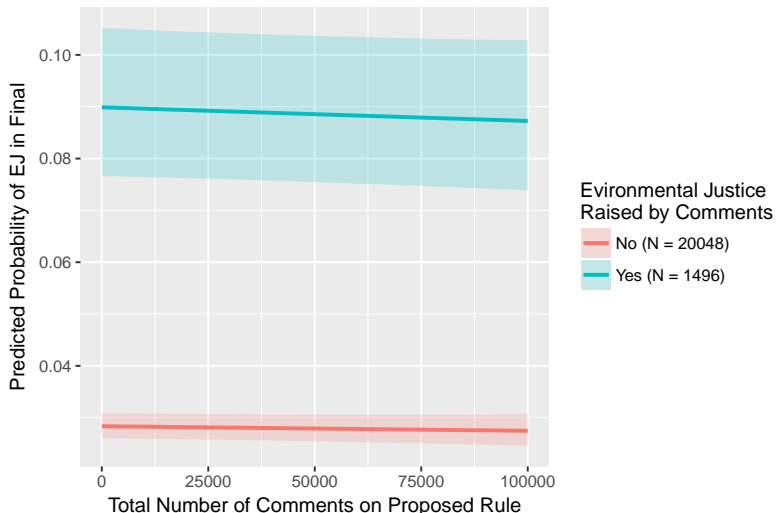
# Win Rate

Figure: Rules With Comments Addressing EJ on a Draft That Did Not



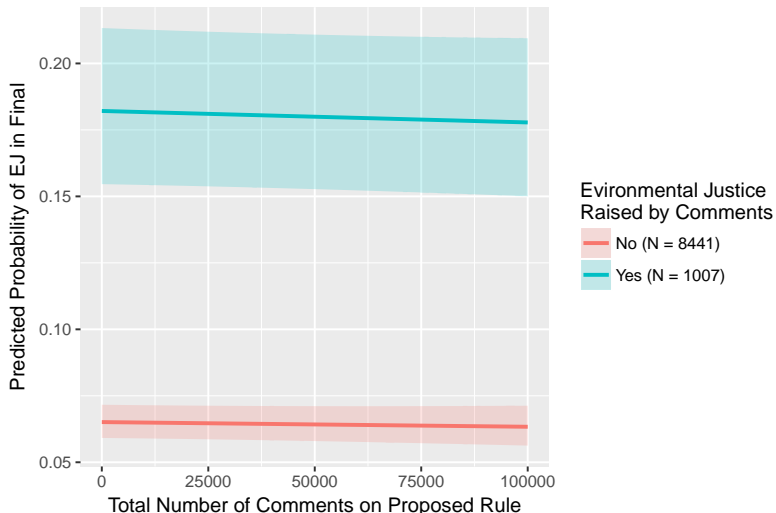
# Logit Regression

Figure: Predicted Probability That a Rule Will Address EJ when the Draft Did Not



# Logit Regression: EPA

Figure: Predicted Probability That a Rule Will Address EJ when the Draft Did Not



# Probability of Responding to Environmental Justice Claims by Agency

