

116TH CONGRESS
1ST SESSION

S. 2236

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

JULY 23, 2019

Mr. BOOKER (for himself, Ms. HARRIS, Mr. BLUMENTHAL, Mr. MARKEY, Mr. UDALL, Mr. DURBIN, Ms. DUCKWORTH, Mr. SANDERS, Mr. MERKLEY, Ms. WARREN, Mr. CARPER, Mr. SCHATZ, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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 2019”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to require Federal agencies to address and
2 eliminate the disproportionate environmental and
3 human health impacts on populations of color, com-
4 munities of color, indigenous communities, and low-
5 income communities;

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

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

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

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

22 (6) to require consideration of cumulative im-
23 pacts in permitting decisions;

1 (7) to clarify congressional intent to afford
2 rights of action pursuant to certain statutes and
3 common law claims; and

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

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) ADMINISTRATOR.—The term “Adminis-
10 trator” means the Administrator of the Environ-
11 mental Protection Agency.

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

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

technologies and applications, and solving complex problems, with an emphasis on the democratization of science and the engagement of diverse people and communities.

(4) ENVIRONMENTAL JUSTICE.—The term “environmental justice” means the fair treatment and meaningful involvement of all individuals, regardless of race, color, national origin, educational level, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies to ensure that—

(A) populations of color, communities of color, indigenous communities, and low-income communities have access to public information and opportunities for meaningful public participation relating to human health and environmental planning, regulations, and enforcement;

(B) no population of color or community of color, indigenous community, or low-income community shall be exposed to a disproportionate burden of the negative human health and environmental impacts of pollution or other environmental hazards; and

(C) the 17 Principles of Environmental Justice written and adopted at the First Na-

1 tional People of Color Environmental Leader-
2 ship Summit held on October 24 through 27,
3 1991, in Washington, DC, are upheld.

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

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

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

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

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

17 (A) a federally recognized Indian Tribe;

18 (B) a State-recognized Indian Tribe;

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

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

24 (8) INFRASTRUCTURE.—The term “infrastruc-
25 ture” means any system for safe drinking water,

sewer collection, solid waste disposal, electricity generation, communication, or transportation access (including highways, airports, marine terminals, rail systems, and residential roads) that is used to effectively and safely support—

(A) housing;

(B) an educational facility;

(C) a medical provider;

(D) a park or recreational facility; or

(E) a local businesses.

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

(A) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development; and

(B) 200 percent of the Federal poverty line.

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

(11) MEANINGFUL.—The term “meaningful”, with respect to involvement by the public in a determination by a Federal agency, means that—

(A) potentially affected residents of a community have an appropriate opportunity to participate in decisions regarding a proposed activity that will affect the environment or public health of the community;

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

(C) the concerns of all participants involved are taken into consideration in the decision-making process; and

(D) the Federal agency—

(i) provides to potentially affected members of the public accurate information; and

(ii) facilitates the involvement of potentially affected members of the public.

(12) POPULATION OF COLOR.—The term “population of color” means a population of individuals who identify as—

(A) Black;

(B) African American;

(C) Asian;

- 1 (D) Pacific Islander;
- 2 (E) another nonWhite race;
- 3 (F) Hispanic;
- 4 (G) Latino; or
- 5 (H) linguistically isolated.

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

- 8 (A) generally accessible, including on the
- 9 internet and in public libraries; and
- 10 (B) accessible for—
 - 11 (i) individuals who are limited in
 - 12 English proficiency, in accordance with Ex-
 - 13 ecutive Order 13166 (65 Fed. Reg. 50121
 - 14 (August 16, 2000)); and
 - 15 (ii) individuals with disabilities.

16 (14) WORKING GROUP.—The term “Working
 17 Group” means the interagency Federal Working
 18 Group on Environmental Justice convened under
 19 section 1–102 of Executive Order 12898 (42 U.S.C.
 20 4321 note), as amended by Executive Order 12948
 21 (60 Fed. Reg. 6381 (January 30, 1995)) and modi-
 22 fied by section 4.

1 **SEC. 4. INTERAGENCY FEDERAL WORKING GROUP ON EN-**
2 **VIROMENTAL JUSTICE.**

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

7 (b) REQUIREMENTS.—

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

10 (A) The Secretary of Agriculture.

11 (B) The Secretary of Commerce.

12 (C) The Secretary of Defense.

13 (D) The Secretary of Energy.

14 (E) The Secretary of Health and Human
15 Services.

16 (F) The Secretary of Homeland Security.

17 (G) The Secretary of Housing and Urban
18 Development.

19 (H) The Secretary of the Interior.

20 (I) The Secretary of Labor.

21 (J) The Secretary of Transportation.

22 (K) The Attorney General.

23 (L) The Administrator.

24 (M) The Director of the Office of Environ-
25 mental Justice.

1 (N) The Chairman of the Consumer Prod-
2 uct Safety Commission.

3 (O) The Chairperson of the Chemical Safe-
4 ty Board.

5 (P) The Director of the Office of Manage-
6 ment and Budget.

7 (Q) The Director of the Office of Science
8 and Technology Policy.

9 (R) The Chair of the Council on Environ-
10 mental Quality.

11 (S) The Assistant to the President for Do-
12 mestic Policy.

13 (T) The Director of the National Economic
14 Council.

15 (U) The Chairman of the Council of Eco-
16 nomic Advisers.

17 (V) Such other Federal officials as the
18 President may designate.

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

20 (A) report to the President through the
21 Chair of the Council on Environmental Quality
22 and the Assistant to the President for Domestic
23 Policy;

24 (B) provide guidance to Federal agencies
25 regarding criteria for identifying disproportion-

1 ately high and adverse human health or envi-
2 ronmental effects—

3 (i) on populations of color, commu-
4 nities of color, indigenous communities,
5 and low-income communities; and

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

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

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

23 (E) identify, based in part on public rec-
24 ommendations contained in Federal agency
25 progress reports, important areas for Federal

1 agencies to take into consideration and address,
 2 as appropriate, in environmental justice strate-
 3 gies and other efforts;

4 (F) assist in coordinating data collection
 5 and maintaining and updating appropriate
 6 databases, as required by this Act;

7 (G) examine existing data and studies re-
 8 lating to environmental justice;

9 (H) hold public meetings and otherwise so-
 10 licit public participation under paragraph (3);
 11 and

12 (I) develop interagency model projects re-
 13 lating to environmental justice that demonstrate
 14 cooperation among Federal agencies.

15 (3) PUBLIC PARTICIPATION.—The Working
 16 Group shall—

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

21 (B) prepare for public review and publish
 22 a summary of any comments and recommenda-
 23 tions provided.

24 (c) JUDICIAL REVIEW AND RIGHTS OF ACTION.—
 25 Any person may commence a civil action—

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

4 (2) otherwise to ensure compliance with this
 5 section (including regulations promulgated pursuant
 6 to this section).

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

9 (a) **FEDERAL AGENCY RESPONSIBILITIES.**—

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

23 (2) **NONDISCRIMINATION.**—Each Federal agen-
 24 cy shall conduct any program, policy, or activity that
 25 substantially affects human health or the environ-

1 ment in a manner that ensures that the program,
2 policy, or activity does not have the effect of exclud-
3 ing any individual or group from participation in,
4 denying any individual or group the benefits of, or
5 subjecting any individual or group to discrimination
6 under, the program, policy, or activity because of
7 race, color, or national origin.

8 (3) STRATEGIES.—

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

21 (i) Implementation of the National
22 Environmental Policy Act of 1969 (42
23 U.S.C. 4321 et seq.).

24 (ii) Implementation of title VI of the
25 Civil Rights Act of 1964 (42 U.S.C. 2000d

et seq.) (including regulations promulgated pursuant to that title).

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

(iv) Impacts from the lack of infrastructure, or from deteriorated infrastructure.

(v) Impacts from land use.

(vi) Impacts from climate change.

(vii) Impacts from commercial transportation.

(B) REVISIONS.—

(i) IN GENERAL.—Each strategy developed and updated pursuant to subparagraph (A) shall identify programs, policies, planning and public participation processes, rulemaking, agency spending, and enforcement activities relating to human health or the environment that may be revised, at a minimum—

(I) to promote enforcement of all health, environmental, and civil rights laws and regulations in areas containing populations of color, commu-

1 nities of color, indigenous commu-
2 nities, and low-income communities;

3 (II) to ensure greater public par-
4 ticipation;

5 (III) to provide increased access
6 to infrastructure;

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

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

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

1 (C) PROGRESS REPORTS.—Not later than
2 1 year after the date of enactment of this Act,
3 and not less frequently than once every 5 years
4 thereafter, each Federal agency shall submit to
5 Congress and the Working Group, and shall
6 publish, a progress report that includes, with
7 respect to the period covered by the report—

8 (i) a description of the current envi-
9 ronmental justice strategy of the Federal
10 agency;

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

16 (I) metrics used by the Federal
17 agency to measure performance; and

18 (II) the progress made by the
19 Federal agency toward—

20 (aa) the achievement of the
21 metrics described in subclause

22 (I); and

23 (bb) mitigating identified in-
24 stances of environmental injus-
25 tice;

1 (iii) a description of the participation
2 by the Federal agency in interagency col-
3 laboration;

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

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

14 (4) PUBLIC PARTICIPATION.—Each Federal
15 agency shall—

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

24 (B) hold public meetings or otherwise so-
25 licit public participation and community-based

1 science from populations of color, communities
 2 of color, indigenous communities, and low-in-
 3 come communities for fact-finding, receiving
 4 public comments, and conducting inquiries con-
 5 cerning environmental justice; and

6 (C) prepare for public review and publish
 7 a summary of the comments and recommenda-
 8 tions provided.

9 (5) ACCESS TO INFORMATION.—Each Federal
 10 agency shall—

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

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

22 (6) CODIFICATION OF GUIDANCE.—

23 (A) COUNCIL ON ENVIRONMENTAL QUAL-
 24 ITY.—Notwithstanding any other provision of
 25 law, sections II and III of the guidance issued

by the Council on Environmental Quality entitled “Environmental Justice Guidance Under the National Environmental Policy Act” and dated December 10, 1997, are enacted into law.

(B) ENVIRONMENTAL PROTECTION AGENCY.—Notwithstanding any other provision of law, the guidance issued by the Environmental Protection Agency entitled “EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights” and dated February 2016 is enacted into law.

(b) HUMAN HEALTH AND ENVIRONMENTAL RESEARCH, DATA COLLECTION, AND ANALYSIS.—

(1) RESEARCH.—Each Federal agency, to the maximum extent practicable and permitted by applicable law, shall—

(A) in conducting environmental or human health research, include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as—

(i) populations of color, communities of color, indigenous communities, popu-

lations with low income, and low-income communities;

(ii) fenceline communities; and

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

(B) in conducting environmental or human health analyses, identify multiple and cumulative exposures; and

(C) actively encourage and solicit community-based science, and provide to populations of color, communities of color, indigenous communities, populations with low income, and low-income communities the opportunity to comment regarding the development and design of research strategies carried out pursuant to this Act.

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

(A) collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations

1 identified by race, national origin, or income;
2 and

3 (B) use that information to determine
4 whether the programs, policies, and activities of
5 the Federal agency have disproportionately high
6 and adverse human health or environmental ef-
7 fects on populations of color, communities of
8 color, indigenous communities, and low-income
9 communities.

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

24 (4) IMPACT FROM FEDERAL FACILITIES.—Each
25 Federal agency, to the maximum extent practicable

1 and permitted by applicable law, shall collect, main-
 2 tain, and analyze information relating to the race,
 3 national origin, and income level, and other readily
 4 accessible and appropriate information, for fenceline
 5 communities in proximity to any facility of the Fed-
 6 eral agency that is—

7 (A) subject to the reporting requirements
 8 under the Emergency Planning and Community
 9 Right-to-Know Act of 1986 (42 U.S.C. 11001
 10 et seq.), as required by Executive Order 12898
 11 (42 U.S.C. 4321 note); and

12 (B) expected to have a substantial environ-
 13 mental, human health, or economic effect on
 14 surrounding populations.

15 (c) CONSUMPTION OF FISH AND WILDLIFE.—

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

22 (2) REQUIREMENT.—The guidance described in
 23 paragraph (1) shall—

24 (A) reflect the latest scientific information
 25 available concerning methods for evaluating the

1 human health risks associated with the con-
2 sumption of pollutant-bearing fish or wildlife;
3 and

4 (B) publish the risks of such consumption
5 patterns.

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

11 (1) Nationally consistent data.

12 (2) Environmental data.

13 (3) Demographic data, including data relating
14 to race, ethnicity, and income.

15 (4) Capacity to produce maps and reports by
16 geographical area.

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

19 (1) to seek relief from, or to compel, an agency
20 action under this section (including regulations pro-
21 mulgated pursuant to this section); or

22 (2) otherwise to ensure compliance with this
23 section (including regulations promulgated pursuant
24 to this section).

1 (f) INFORMATION SHARING.—In carrying out this
2 section, each Federal agency, to the maximum extent
3 practicable and permitted by applicable law, shall share
4 information and eliminate unnecessary duplication of ef-
5 forts through the use of existing data systems and cooper-
6 ative agreements among Federal agencies and with State,
7 local, and Tribal governments.

8 **SEC. 6. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY**
9 **COUNCIL.**

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

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

20 (c) MEMBERSHIP.—The membership of the Advisory
21 Council shall—

22 (1) be determined and appointed in accordance
23 with, as applicable—

1 (A) the charter described in subsection (a)
2 (or any subsequent amendment or revision of
3 that charter); or

4 (B) other appropriate bylaws or documents
5 of the Advisory Council, as determined by the
6 Administrator; and

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

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

15 (e) MEETINGS.—

16 (1) IN GENERAL.—The Advisory Council shall
17 meet not less frequently than 3 times each calendar
18 year.

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

21 (3) DESIGNATED FEDERAL OFFICER.—The des-
22 ignated Federal officer described in subsection (d)
23 (or a designee) shall—

24 (A) be present at each meeting of the Ad-
25 visory Council;

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

4 (C) provide an opportunity for interested
 5 persons—

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

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

10 (D) ensure that a representative of the
 11 Working Group and a high-level representative
 12 from each regional office of the Environmental
 13 Protection Agency are invited to, and encour-
 14 aged to attend, each meeting of the Advisory
 15 Council; and

16 (E) provide technical assistance to States
 17 seeking to establish State-level environmental
 18 justice advisory councils or implement other en-
 19 vironmental justice policies or programs.

20 (f) RESPONSES FROM ADMINISTRATOR.—

21 (1) PUBLIC COMMENT INQUIRIES.—The Admin-
 22 istrator shall provide a written response to each in-
 23 quiry submitted to the Administrator by a member
 24 of the public before or after each meeting of the Ad-

visory Council by not later than 120 days after the date of submission.

(2) RECOMMENDATIONS FROM ADVISORY COUNCIL.—The Administrator shall provide a written response to each recommendation submitted to the Administrator by the Advisory Council by not later than 120 days after the date of submission.

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

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

SEC. 7. ENVIRONMENTAL JUSTICE GRANT PROGRAMS.

(a) IN GENERAL.—The Administrator shall continue to carry out the Environmental Justice Small Grants Program and the Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program, as those programs are in existence on the date of enactment of this Act.

(b) CARE GRANTS.—The Administrator shall continue to carry out the Community Action for a Renewed

1 Environment grant programs I and II, as in existence on
2 January 1, 2012.

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

7 **SEC. 8. CONSIDERATION OF CUMULATIVE IMPACTS AND**
8 **PERSISTENT VIOLATIONS IN CERTAIN PER-**
9 **MITTING DECISIONS.**

10 (a) FEDERAL WATER POLLUTION CONTROL ACT.—
11 Section 402 of the Federal Water Pollution Control Act
12 (33 U.S.C. 1342) is amended—

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

16 **“SEC. 402. NATIONAL POLLUTANT DISCHARGE ELIMI-**
17 **NATION SYSTEM.**

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

19 **“(1) IN GENERAL.—Except as”;**

20 **(2) in subsection (a)—**

21 **(A) in paragraph (1)—**

22 **(i) by striking “upon condition that**
23 **such discharge will meet either (A) all”**
24 **and inserting the following: “subject to the**
25 **conditions that—**

1 “(A) the discharge will achieve compliance
2 with, as applicable—

3 “(i) all”;

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

6 “403; or

7 “(ii) prior”; and

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

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

12 “(i) based on an analysis by the Ad-
13 ministrator of existing water quality and
14 the potential cumulative impacts (as de-
15 fined in section 501 of the Clean Air Act
16 (42 U.S.C. 7661)) of the discharge, consid-
17 ered in conjunction with the designated
18 and actual uses of the impacted navigable
19 water, there exists a reasonable certainty
20 of no harm to the health of the general
21 population, or to any potentially exposed or
22 susceptible subpopulation; or

23 “(ii) if the Administrator determines
24 that, due to those potential cumulative im-
25 pacts, there does not exist a reasonable

1 certainty of no harm to the health of the
2 general population, or to any potentially
3 exposed or susceptible subpopulation, the
4 permit or renewal includes such terms and
5 conditions as the Administrator determines
6 to be necessary to ensure a reasonable cer-
7 tainty of no harm.”; and

8 (B) in paragraph (2), by striking “assure
9 compliance with the requirements of paragraph
10 (1) of this subsection, including conditions on
11 data and information collection, reporting, and
12 such other requirements as he deems appro-
13 priate.” and inserting the following: “ensure
14 compliance with the requirements of paragraph
15 (1), including—

16 “(A) conditions relating to—

17 “(i) data and information collection;

18 “(ii) reporting; and

19 “(iii) such other requirements as the
20 Administrator determines to be appro-
21 priate; and

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

24 (3) in subsection (b)—

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

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

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

7 “(10) To ensure that no permit will be issued
 8 or renewed if, with respect to an application for the
 9 permit, the State determines, based on an analysis
 10 by the State of existing water quality and the poten-
 11 tial cumulative impacts (as defined in section 501 of
 12 the Clean Air Act (42 U.S.C. 7661)) of the dis-
 13 charge, considered in conjunction with the des-
 14 ignated and actual uses of the impacted navigable
 15 water, that the terms and conditions of the permit
 16 or renewal would not be sufficient to ensure a rea-
 17 sonable certainty of no harm to the health of the
 18 general population, or to any potentially exposed or
 19 susceptible subpopulation.”.

20 (b) CLEAN AIR ACT.—

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

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

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

5 (C) by inserting after paragraph (1) the
 6 following:

7 “(2) CUMULATIVE IMPACTS.—The term ‘cumu-
 8 lative impacts’ means any exposure, public health or
 9 environmental risk, or other effect occurring in a
 10 specific geographical area, including from an emis-
 11 sion or release—

12 “(A) including—

13 “(i) environmental pollution re-
 14 leased—

15 “(I)(aa) routinely;

16 “(bb) accidentally; or

17 “(cc) otherwise; and

18 “(II) from any source, whether
 19 single or multiple; and

20 “(ii) as assessed based on the com-
 21 bined past, present, and reasonably fore-
 22 seeable emissions and discharges affecting
 23 the geographical area; and

1 “(B) evaluated taking into account sen-
 2 sitive populations and socioeconomic factors,
 3 where applicable.”.

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

6 (A) in paragraph (5)—

7 (i) in subparagraphs (A) and (C), by
 8 striking “assure” each place it appears and
 9 inserting “ensure”; and

10 (ii) by striking subparagraph (F) and
 11 inserting the following:

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

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

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

(B) in paragraph (9)—

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

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

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

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

(iii) in the second sentence, by striking “Such revisions” and inserting the following:

“(B) REVISION REQUIREMENTS.—

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

(iv) by striking the paragraph designation and all that follows through “shall require” in the first sentence and inserting the following:

“(9) MAJOR SOURCES.—

1 “(A) IN GENERAL.—With respect to any
2 permit or renewal of a permit, as applicable, for
3 a major source, a requirement that the permit-
4 ting authority shall—

5 “(i) in determining whether to issue
6 or renew the permit—

7 “(I) evaluate the potential cumu-
8 lative impacts of the proposed major
9 source, as described in the applicable
10 cumulative impacts analysis submitted
11 under section 503(b)(3);

12 “(II) if, due to those potential
13 cumulative impacts, the permitting
14 authority cannot determine that there
15 exists a reasonable certainty of no
16 harm to the health of the general pop-
17 ulation, or to any potentially exposed
18 or susceptible subpopulation, of any
19 census tracts or Tribal census tracts
20 (as those terms are defined by the Di-
21 rector of the Bureau of the Census)
22 located in, or immediately adjacent to,
23 the area in which the major source is,
24 or is proposed to be, located—

1 “(aa) include in the permit
2 or renewal such terms and condi-
3 tions (including additional con-
4 trols or pollution prevention re-
5 quirements) as the permitting
6 authority determines to be nec-
7 essary to ensure a reasonable cer-
8 tainty of no harm; or

9 “(bb) if the permitting au-
10 thority determines that terms
11 and conditions described in item
12 (aa) would not be sufficient to
13 ensure a reasonable certainty of
14 no harm, deny the issuance or re-
15 newal of the permit;

16 “(III) determine whether the ap-
17 plicant is a persistent violator, based
18 on such criteria relating to the history
19 of compliance by an applicant with
20 this Act as the Administrator shall es-
21 tablish by not later than 180 days
22 after the date of enactment of the En-
23 vironmental Justice Act of 2019;

24 “(IV) if the permitting authority
25 determines under subclause (III) that

1 the applicant is a persistent violator
2 and the permitting authority does not
3 deny the issuance or renewal of the
4 permit pursuant to subclause
5 (V)(bb)—

6 “(aa) require the applicant
7 to submit a redemption plan that
8 describes—

9 “(AA) if the applicant
10 is not compliance with this
11 Act, measures the applicant
12 will carry out to achieve that
13 compliance, together with an
14 approximate deadline for
15 that achievement;

16 “(BB) measures the
17 applicant will carry out, or
18 has carried out to ensure the
19 applicant will remain in
20 compliance with this Act,
21 and to mitigate the environ-
22 mental and health effects of
23 noncompliance; and

24 “(CC) the measures the
25 applicant has carried out in

1 preparing the redemption
 2 plan to consult or negotiate
 3 with the communities af-
 4 fected by each persistent vio-
 5 lation addressed in the plan;
 6 and

7 “(bb) once such a redemp-
 8 tion plan is submitted, determine
 9 whether the plan is adequate to
 10 ensuring that the applicant—

11 “(AA) will achieve com-
 12 pliance with this Act expedi-
 13 tiously;

14 “(BB) will remain in
 15 compliance with this Act;

16 “(CC) will mitigate the
 17 environmental and health ef-
 18 fects of noncompliance; and

19 “(DD) has solicited and
 20 responded to community
 21 input regarding the redemp-
 22 tion plan; and

23 “(V) deny the issuance or re-
 24 newal of the permit if the permitting
 25 authority determines that—

1 “(aa) the redemption plan
 2 submitted under subclause
 3 (IV)(aa) is inadequate; or

4 “(bb)(AA) the applicant has
 5 submitted a redemption plan on
 6 a prior occasion, but continues to
 7 be a persistent violator; and

8 “(BB) no indication exists
 9 of extremely exigent cir-
 10 cumstances excusing the per-
 11 sistent violations; and

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

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

18 “(3) MAJOR SOURCE ANALYSES.—The regula-
 19 tions required by section 502(b) shall include a re-
 20 quirement that an applicant for a permit or renewal
 21 of a permit for a major source shall submit, together
 22 with the compliance plan required under this sub-
 23 section, a cumulative impacts analysis for each cen-
 24 sus tract or Tribal census tract (as those terms are
 25 defined by the Director of the Bureau of the Cen-

1 sus) located in, or immediately adjacent to, the area
2 in which the major source is, or is proposed to be,
3 located that analyzes—

4 “(A) community demographics and loca-
5 tions of community exposure points, such as
6 schools, day care centers, nursing homes, hos-
7 pitals, health clinics, places of religious worship,
8 parks, playgrounds, and community centers;

9 “(B) air quality and the potential effect on
10 that air quality of emissions of air pollutants
11 (including pollutants listed under section 108 or
12 112) from the proposed major source, including
13 in combination with existing sources of pollut-
14 ants;

15 “(C) the potential effects on soil quality
16 and water quality of emissions of lead and other
17 air pollutants that could contaminate soil or
18 water from the proposed major source, includ-
19 ing in combination with existing sources of pol-
20 lutants; and

21 “(D) public health and any potential ef-
22 fects on public health of the proposed major
23 source.”.

1 **SEC. 9. IMPLIED RIGHTS OF ACTION AND COMMON LAW**
 2 **CLAIMS.**

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

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

8 “(1) DEFINITION OF COVERED ACT.—In this
 9 subsection:

10 “(A) IN GENERAL.—The term ‘covered
 11 Act’ means—

12 “(i) this Act;

13 “(ii) the Federal Insecticide, Fun-
 14 gicide, and Rodenticide Act (7 U.S.C. 136
 15 et seq.);

16 “(iii) the Surface Mining Control and
 17 Reclamation Act of 1977 (30 U.S.C. 1201
 18 et seq.);

19 “(iv) the Marine Protection, Research,
 20 and Sanctuaries Act of 1972 (33 U.S.C.
 21 1401 et seq.);

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

24 “(vi) the Solid Waste Disposal Act
 25 (42 U.S.C. 6901 et seq.);

1 “(vii) the Clean Air Act (42 U.S.C.
2 7401 et seq.);

3 “(viii) the Comprehensive Environ-
4 mental Response, Compensation, and Li-
5 ability Act of 1980 (42 U.S.C. 9601 et
6 seq.); and

7 “(ix) any other Act administered by
8 the Administrator.

9 “(B) INCLUSIONS.—The term ‘covered
10 Act’ includes any provision of an Act described
11 in subparagraph (A) the date of enactment of
12 which is after the date of enactment of this
13 subsection, unless that provision is specifically
14 excluded from this subsection.

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

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

19 “(B) that is implied under—

20 “(i) a covered Act; or

21 “(ii) common law.

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

1 **SEC. 10. PRIVATE RIGHTS OF ACTION FOR DISCRIMINA-**
2 **TORY PRACTICES.**

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

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

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

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

13 (b) EFFECTIVE DATE.—

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

17 (2) APPLICATION.—This section, including the
18 amendments made by this section, applies to all ac-
19 tions or proceedings pending on or after the date of
20 enactment of this Act.

21 **SEC. 11. SEVERABILITY.**

22 If any provision of this Act, or the application of such
23 a provision to any person or circumstance, is determined
24 to be invalid, the remainder of this Act and the application

- 1 of the provision to other persons or circumstances shall
- 2 not be affected.

