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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

OCTOBER 24, 2017

Mr. BOOKER (for himself, Mr. DURBIN, Mr. CARPER, Mr. SCHATZ, Mr. UDALL, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Mr. MARKEY, Mr. MERKLEY, Ms. WARREN, Ms. HARRIS, and Mr. SANDERS) 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 2017”.

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 communities of color, in-
4 digenous communities, and low-income communities;

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

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

12 (4) to provide to communities of color, indige-
13 nous communities, and low-income communities
14 greater access to public information and opportuni-
15 ties for participation in decisionmaking affecting
16 human health and the environment;

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

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

23 (7) to clarify congressional intent to afford
24 rights of action pursuant to certain statutes and
25 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) CITIZEN SCIENCE.—The term “citizen
10 science” means voluntary public participation in the
11 scientific process and the incorporation of data and
12 information generated outside of traditional institu-
13 tional boundaries to address real-world problems in
14 ways that may include formulating research ques-
15 tions, conducting scientific experiments, collecting
16 and analyzing data, interpreting results, making new
17 discoveries, developing technologies and applications,
18 and solving complex problems, with an emphasis on
19 the democratization of science and the engagement
20 of diverse people and communities.

21 (3) COMMUNITY OF COLOR.—The term “com-
22 munity of color” means any geographically distinct
23 population with a substantial number of individuals
24 who identify as black, African-American, Hispanic,

1 Latino, Asian, Pacific Islander, or any other
2 nonwhite race.

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) communities of color, indigenous com-
11 munities, and low-income communities have ac-
12 cess to public information and opportunities for
13 meaningful public participation relating to
14 human health and environmental planning, regu-
15 lations, and enforcement;

16 (B) no community of color, indigenous
17 community, or low-income community shall be
18 exposed to a disproportionate burden of the
19 negative human health and environmental im-
20 pacts of pollution or other environmental haz-
21 ards; 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 the
8 President may designate that carries out a Fed-
9 eral program or activity that substantially af-
10 fects human health or the environment.

11 (6) INFRASTRUCTURE.—The term “infrastruc-
12 ture” means any system for safe drinking water,
13 sewer collection, solid waste disposal, electricity gen-
14 eration, communication, or transportation access (in-
15 cluding highways, airports, marine terminals, rail
16 systems, and residential roads) that is used to effec-
17 tively and safely support housing, an educational fa-
18 cility, a medical provider, a park or recreational fa-
19 cility, or local businesses.

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

22 (A) generally accessible, including on the
23 Internet and in public libraries; and

24 (B) accessible for—

1 (i) individuals who are limited in
2 English proficiency, in accordance with Ex-
3 ecutive Order 13166 (65 Fed. Reg. 50121
4 (August 16, 2000)); and

5 (ii) individuals with disabilities.

6 (8) WORKING GROUP.—The term “Working
7 Group” means the interagency Federal Working
8 Group on Environmental Justice convened under
9 section 1–102 of Executive Order 12898 (42 U.S.C.
10 4321 note; relating to Federal actions to address en-
11 vironmental justice in minority populations and low-
12 income populations), as amended by Executive Order
13 12948 (60 Fed. Reg. 6381 (January 30, 1995)) and
14 modified by section 4.

15 **SEC. 4. INTERAGENCY FEDERAL WORKING GROUP ON EN-**
16 **VIRONMENTAL JUSTICE.**

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

21 (b) REQUIREMENTS.—

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

24 (A) The Secretary of Agriculture.

25 (B) The Secretary of Commerce.

1 (C) The Secretary of Defense.

2 (D) The Secretary of Energy.

3 (E) The Secretary of Health and Human
4 Services.

5 (F) The Secretary of Homeland Security.

6 (G) The Secretary of Housing and Urban
7 Development.

8 (H) The Secretary of the Interior.

9 (I) The Secretary of Labor.

10 (J) The Secretary of Transportation.

11 (K) The Attorney General.

12 (L) The Administrator.

13 (M) The Director of the Office of Environ-
14 mental Justice.

15 (N) The Chairman of the Consumer Prod-
16 uct Safety Commission.

17 (O) The Chairperson of the Chemical Safe-
18 ty Board.

19 (P) The Director of the Office of Manage-
20 ment and Budget.

21 (Q) The Director of the Office of Science
22 and Technology Policy.

23 (R) The Chair of the Council on Environ-
24 mental Quality.

1 (S) The Assistant to the President for Do-
2 mestic Policy.

3 (T) The Director of the National Economic
4 Council.

5 (U) The Chairman of the Council of Eco-
6 nomic Advisers.

7 (V) Such other Federal officials as the
8 President may designate.

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

10 (A) report to the President through the
11 Chair of the Council on Environmental Quality
12 and the Assistant to the President for Domestic
13 Policy;

14 (B) provide guidance to Federal agencies
15 regarding criteria for identifying disproportion-
16 ately high and adverse human health or envi-
17 ronmental effects—

18 (i) on communities of color, indige-
19 nous communities, and low-income commu-
20 nities; and

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

23 (C) coordinate with, provide guidance to,
24 and serve as a clearinghouse for, each Federal
25 agency with respect to the implementation and

1 updating of an environmental justice strategy
2 required under this Act, in order to ensure that
3 the administration, interpretation, and enforce-
4 ment of programs, activities, and policies are
5 carried out in a consistent manner;

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

13 (E) identify, based in part on public rec-
14 ommendations contained in Federal agency
15 progress reports, important areas for Federal
16 agencies to take into consideration and address,
17 as appropriate, in environmental justice strate-
18 gies and other efforts;

19 (F) assist in coordinating data collection
20 and maintaining and updating appropriate
21 databases, as required by this Act;

22 (G) examine existing data and studies re-
23 lating to environmental justice;

1 (H) hold public meetings and otherwise so-
2 licit public participation under paragraph (3);
3 and

4 (I) develop interagency model projects re-
5 lating to environmental justice that demonstrate
6 cooperation among Federal agencies.

7 (3) PUBLIC PARTICIPATION.—The Working
8 Group shall—

9 (A) hold public meetings or otherwise so-
10 licit public participation and citizen science for
11 the purpose of fact-finding with respect to the
12 implementation of this Act; and

13 (B) prepare for public review and publish
14 a summary of any comments and recommenda-
15 tions provided.

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

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

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

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

3 (a) FEDERAL AGENCY RESPONSIBILITIES.—

4 (1) ENVIRONMENTAL JUSTICE MISSION.—To
5 the maximum extent practicable and permitted by
6 applicable law, each Federal agency shall make
7 achieving environmental justice part of the mission
8 of the Federal agency by identifying, addressing,
9 and mitigating disproportionately high and adverse
10 human health or environmental effects of the pro-
11 grams, policies, and activities of the Federal agency
12 on communities of color, indigenous communities,
13 and low-income communities in the United States
14 (including the territories and possessions of the
15 United States and the District of Columbia).

16 (2) NONDISCRIMINATION.—Each Federal agen-
17 cy shall conduct any program, policy, or activity that
18 substantially affects human health or the environ-
19 ment in a manner that ensures that the program,
20 policy, or activity does not have the effect of exclud-
21 ing any individual or group from participation in,
22 denying any individual or group the benefits of, or
23 subjecting any individual or group to discrimination
24 under, the program, policy, or activity because of
25 race, color, or national origin.

26 (3) STRATEGIES.—

1 (A) AGENCYWIDE STRATEGIES.—Each
2 Federal agency shall implement and update, not
3 less frequently than annually, an agencywide
4 environmental justice strategy that identifies
5 and addresses disproportionately high and ad-
6 verse human health or environmental effects of
7 the programs, policies, spending, and other ac-
8 tivities of the Federal agency with respect to
9 communities of color, indigenous communities,
10 and low-income communities, including, as ap-
11 propriate for the mission of the Federal agency,
12 with respect to the following areas:

13 (i) Implementation of the National
14 Environmental Policy Act of 1969 (42
15 U.S.C. 4321 et seq.).

16 (ii) Implementation of title VI of the
17 Civil Rights Act of 1964 (42 U.S.C. 2000d
18 et seq.) (including regulations promulgated
19 pursuant to that title).

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

23 (iv) Impacts from the lack of infra-
24 structure, or from deteriorated infrastruc-
25 ture.

- 1 (v) Impacts from land use.
2 (vi) Impacts from climate change.
3 (vii) Impacts from commercial trans-
4 portation.

5 (B) REVISIONS.—

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

14 (I) to promote enforcement of all
15 health, environmental, and civil rights
16 laws and regulations in areas con-
17 taining communities of color, indige-
18 nous communities, and low-income
19 communities;

20 (II) to ensure greater public par-
21 ticipation;

22 (III) to provide increased access
23 to infrastructure;

24 (IV) to improve research and
25 data collection relating to the health

1 and environment of communities of
2 color, indigenous communities, and
3 low-income communities, including
4 through the increased use of citizen
5 science; and

6 (V) to identify differential pat-
7 terns of use of natural resources
8 among communities of color, indige-
9 nous communities, and low-income
10 communities.

11 (ii) TIMETABLES.—Each strategy im-
12 plemented and updated pursuant to sub-
13 paragraph (A) shall include a timetable for
14 undertaking revisions identified pursuant
15 to clause (i).

16 (C) PROGRESS REPORTS.—Not later than
17 1 year after the date of enactment of this Act,
18 and not less frequently than once every 5 years
19 thereafter, each Federal agency shall submit to
20 Congress and the Working Group, and shall
21 publish, a progress report that includes, with
22 respect to the period covered by the report—

23 (i) a description of the current envi-
24 ronmental justice strategy of the Federal
25 agency;

1 (ii) an evaluation of the progress
2 made by the Federal agency at national
3 and regional levels regarding implementa-
4 tion of the environmental justice strategy,
5 including—

6 (I) metrics used by the Federal
7 agency to measure performance; and

8 (II) the progress made by the
9 Federal agency toward—

10 (aa) the achievement of the
11 metrics described in subclause
12 (I); and

13 (bb) mitigating identified in-
14 stances of environmental injus-
15 tice;

16 (iii) a description of the participation
17 by the Federal agency in interagency col-
18 laboration;

19 (iv) responses to recommendations
20 submitted by members of the public to the
21 Federal agency relating to the environ-
22 mental justice strategy of the Federal
23 agency and the implementation by the
24 Federal agency of this Act; and

1 (v) any updates or revisions to the en-
2 vironmental justice strategy of the Federal
3 agency, including those resulting from pub-
4 lic comments.

5 (4) PUBLIC PARTICIPATION.—Each Federal
6 agency shall—

7 (A) ensure that meaningful opportunities
8 exist for the public to submit comments and
9 recommendations relating to the environmental
10 justice strategy, progress reports, and ongoing
11 efforts of the Federal agency to incorporate en-
12 vironmental justice principles into the pro-
13 grams, policies, and activities of the Federal
14 agency;

15 (B) hold public meetings or otherwise so-
16 licit public participation and citizen science
17 from communities of color, indigenous commu-
18 nities, and low-income communities for the pur-
19 pose of fact-finding and policy development, re-
20 ceiving public comments, and conducting inquir-
21 ies concerning environmental justice; and

22 (C) prepare for public review and publish
23 a summary of the comments and recommenda-
24 tions provided.

1 (5) ACCESS TO INFORMATION.—Each Federal
2 agency shall—

3 (A) publish public documents, notices, and
4 hearings relating to the programs, policies, and
5 activities of the Federal agency that affect
6 human health or the environment; and

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

14 (6) CODIFICATION OF GUIDANCE.—

15 (A) COUNCIL ON ENVIRONMENTAL QUAL-
16 ITY.—Notwithstanding any other provision of
17 law, sections II and III of the guidance issued
18 by the Council on Environmental Quality enti-
19 tled “Environmental Justice Guidance Under
20 the National Environmental Policy Act” and
21 dated December 10, 1997, are enacted into law.

22 (B) ENVIRONMENTAL PROTECTION AGEN-
23 CY.—Notwithstanding any other provision of
24 law, the guidance issued by the Environmental
25 Protection Agency entitled “EPA Policy on

1 Consultation and Coordination with Indian
2 Tribes: Guidance for Discussing Tribal Treaty
3 Rights” and dated February 2016 is enacted
4 into law.

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

7 (1) RESEARCH.—Each Federal agency, to the
8 maximum extent practicable and permitted by appli-
9 cable law, shall—

10 (A) in conducting environmental or human
11 health research, include diverse segments of the
12 population in epidemiological and clinical stud-
13 ies, including segments at high risk from envi-
14 ronmental hazards, such as—

15 (i) communities of color, indigenous
16 communities, and low-income communities;
17 and

18 (ii) workers who may be exposed to
19 substantial environmental hazards;

20 (B) in conducting environmental or human
21 health analyses, identify multiple and cumu-
22 lative exposures; and

23 (C) actively encourage and solicit citizen
24 science, and provide to communities of color, in-
25 digenous communities, and low-income commu-

1 nities the opportunity to comment regarding the
2 development and design of research strategies
3 carried out pursuant to this Act.

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

9 (A) collect, maintain, and analyze informa-
10 tion assessing and comparing environmental
11 and human health risks borne by populations
12 identified by race, national origin, or income;
13 and

14 (B) use that information to determine
15 whether the programs, policies, and activities of
16 the Federal agency have disproportionately high
17 and adverse human health or environmental ef-
18 fects on communities of color, indigenous com-
19 munities, and low-income communities.

20 (3) INFORMATION RELATING TO NON-FEDERAL
21 FACILITIES.—In connection with the implementation
22 of Federal agency strategies under subsection (a)(3),
23 each Federal agency, to the maximum extent prac-
24 ticable and permitted by applicable law, shall collect,
25 maintain, and analyze information relating to the

1 race, national origin, and income level, and other
2 readily accessible and appropriate information, for
3 areas surrounding any facility or site expected to
4 have a substantial environmental, human health, or
5 economic effect on the surrounding populations, if
6 the facility or site becomes the subject of a substan-
7 tial Federal environmental administrative or judicial
8 action.

9 (4) IMPACT FROM FEDERAL FACILITIES.—Each
10 Federal agency, to the maximum extent practicable
11 and permitted by applicable law, shall collect, main-
12 tain, and analyze information relating to the race,
13 national origin, and income level, and other readily
14 accessible and appropriate information, for areas
15 surrounding any facility of the Federal agency that
16 is—

17 (A) subject to the reporting requirements
18 under the Emergency Planning and Community
19 Right-to-Know Act of 1986 (42 U.S.C. 11001
20 et seq.), as required by Executive Order 12898
21 (42 U.S.C. 4321 note; relating to Federal ac-
22 tions to address environmental justice in minor-
23 ity populations and low-income populations);
24 and

1 (B) expected to have a substantial environ-
2 mental, human health, or economic effect on
3 surrounding populations.

4 (c) CONSUMPTION OF FISH AND WILDLIFE.—

5 (1) IN GENERAL.—Each Federal agency shall
6 develop, publish (unless prohibited by law), and re-
7 vise, as practicable and appropriate, guidance on ac-
8 tions of the Federal agency that will impact fish and
9 wildlife consumed by populations that principally
10 rely on fish or wildlife for subsistence.

11 (2) REQUIREMENT.—The guidance described in
12 paragraph (1) shall—

13 (A) reflect the latest scientific information
14 available concerning methods for evaluating the
15 human health risks associated with the con-
16 sumption of pollutant-bearing fish or wildlife;
17 and

18 (B) publish the risks of such consumption
19 patterns.

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

25 (1) Nationally consistent data.

1 (2) Environmental data.

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

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

6 (e) JUDICIAL REVIEW AND RIGHTS OF ACTION.—

7 Any person may commence a civil action—

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

11 (2) otherwise to ensure compliance with this
12 section (including regulations promulgated pursuant
13 to this section).

14 (f) INFORMATION SHARING.—In carrying out this
15 section, each Federal agency, to the maximum extent
16 practicable and permitted by applicable law, shall share
17 information and eliminate unnecessary duplication of ef-
18 forts through the use of existing data systems and cooper-
19 ative agreements among Federal agencies and with State,
20 local, and Tribal governments.

21 **SEC. 6. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY**
22 **COUNCIL.**

23 (a) ESTABLISHMENT.—The establishment by the Ad-
24 ministrator on September 30, 1993, by charter pursuant
25 to the Federal Advisory Committee Act (5 U.S.C. App.)

1 of the National Environmental Justice Advisory Council
2 (referred to in this section as the “Advisory Council”) is
3 enacted into law.

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

8 (c) MEMBERSHIP.—The membership of the Advisory
9 Council shall—

10 (1) be determined and appointed in accordance
11 with, as applicable—

12 (A) the charter described in subsection (a)
13 (or any subsequent amendment or revision of
14 that charter); or

15 (B) other appropriate bylaws or documents
16 of the Advisory Council, as determined by the
17 Administrator; and

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

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

1 (e) MEETINGS.—

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

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

7 (3) DESIGNATED FEDERAL OFFICER.—The des-
8 ignated Federal officer described in subsection (d)
9 (or a designee) shall—

10 (A) be present at each meeting of the Ad-
11 visory Council;

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

15 (C) provide an opportunity for interested
16 persons—

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

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

21 (D) ensure that a representative of the
22 Working Group and a high-level representative
23 from each regional office of the Environmental
24 Protection Agency are invited to, and encour-

1 aged to attend, each meeting of the Advisory
2 Council; and

3 (E) provide technical assistance to States
4 seeking to establish State-level environmental
5 justice advisory councils or implement other en-
6 vironmental justice policies or programs.

7 (f) RESPONSES FROM ADMINISTRATOR.—

8 (1) PUBLIC COMMENT INQUIRIES.—The Admin-
9 istrator shall provide a written response to each in-
10 quiry submitted to the Administrator by a member
11 of the public before or after each meeting of the Ad-
12 visory Council by not later than 120 days after the
13 date of submission.

14 (2) RECOMMENDATIONS FROM ADVISORY COUN-
15 CIL.—The Administrator shall provide a written re-
16 sponse to each recommendation submitted to the Ad-
17 ministrator by the Advisory Council by not later
18 than 120 days after the date of submission.

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

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

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

4 (a) IN GENERAL.—The Administrator shall continue
5 to carry out the Environmental Justice Small Grants Pro-
6 gram and the Environmental Justice Collaborative Prob-
7 lem-Solving Cooperative Agreement Program, as those
8 programs are in existence on the date of enactment of this
9 Act.

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

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
15 authorized to be appropriated to carry out the programs
16 described in subsections (a) and (b) \$10,000,000 for each
17 of fiscal years 2018 through 2027.

18 **SEC. 8. CONSIDERATION OF CUMULATIVE IMPACTS AND**
19 **PERSISTENT VIOLATIONS IN CERTAIN PER-**
20 **MITTING DECISIONS.**

21 (a) FEDERAL WATER POLLUTION CONTROL ACT.—
22 Section 402 of the Federal Water Pollution Control Act
23 (33 U.S.C. 1342) is amended—

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

4 **“SEC. 402. NATIONAL POLLUTANT DISCHARGE ELIMI-**
5 **NATION SYSTEM.**

6 “(a) PERMITS ISSUED BY ADMINISTRATOR.—

7 “(1) IN GENERAL.—Except as”;

8 (2) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) by striking “upon condition that
11 such discharge will meet either (A) all”
12 and inserting the following: “subject to the
13 conditions that—

14 “(A) the discharge will achieve compliance
15 with, as applicable—

16 “(i) all”;

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

19 “403; or

20 “(ii) prior”; and

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

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

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

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

22 (B) in paragraph (2), by striking “assure
23 compliance with the requirements of paragraph
24 (1) of this subsection, including conditions on
25 data and information collection, reporting, and

1 such other requirements as he deems appro-
2 priate.” and inserting the following: “ensure
3 compliance with the requirements of paragraph
4 (1), including—

5 “(A) conditions relating to—

6 “(i) data and information collection;

7 “(ii) reporting; and

8 “(iii) such other requirements as the
9 Administrator determines to be appro-
10 priate; and

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

13 (3) in subsection (b)—

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

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

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

20 “(10) To ensure that no permit will be issued
21 or renewed if, with respect to an application for the
22 permit, the State determines, based on an analysis
23 by the State of existing water quality and the poten-
24 tial cumulative impacts (as defined in section 501 of
25 the Clean Air Act (42 U.S.C. 7661)) of the dis-

1 charge, considered in conjunction with the des-
2 ignated and actual uses of the impacted navigable
3 water, that the terms and conditions of the permit
4 or renewal would not be sufficient to ensure a rea-
5 sonable certainty of no harm to the health of the
6 general population, or to any potentially exposed or
7 susceptible subpopulation.”.

8 (b) CLEAN AIR ACT.—

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

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

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

18 (C) by inserting after paragraph (1) the
19 following:

20 “(2) CUMULATIVE IMPACTS.—The term ‘cumu-
21 lative impacts’ means any exposure, public health or
22 environmental risk, or other effect occurring in a
23 specific geographical area, including from an emis-
24 sion or release—

25 “(A) including—

1 “(i) environmental pollution re-
2 leased—

3 “(I)(aa) routinely;

4 “(bb) accidentally; or

5 “(cc) otherwise; and

6 “(II) from any source, whether
7 single or multiple; and

8 “(ii) as assessed based on the com-
9 bined past, present, and reasonably fore-
10 seeable emissions and discharges affecting
11 the geographical area; and

12 “(B) evaluated taking into account sen-
13 sitive populations and socioeconomic factors,
14 where applicable.”.

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

17 (A) in paragraph (5)—

18 (i) in subparagraphs (A) and (C), by
19 striking “assure” each place it appears and
20 inserting “ensure”; and

21 (ii) by striking subparagraph (F) and
22 inserting the following:

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

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

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

16 (B) in paragraph (9)—

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

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

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

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

3 (iii) in the second sentence, by strik-
4 ing “Such revisions” and inserting the fol-
5 lowing:

6 “(B) REVISION REQUIREMENTS.—

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

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

13 “(9) MAJOR SOURCES.—

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

18 “(i) in determining whether to issue
19 or renew the permit—

20 “(I) evaluate the potential cumu-
21 lative impacts of the proposed major
22 source, as described in the applicable
23 cumulative impacts analysis submitted
24 under section 503(b)(3);

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

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

22 “(bb) if the permitting au-
23 thority determines that terms
24 and conditions described in item
25 (aa) would not be sufficient to

1 ensure a reasonable certainty of
2 no harm, deny the issuance or re-
3 newal of the permit;

4 “(III) determine whether the ap-
5 plicant is a persistent violator, based
6 on such criteria relating to the history
7 of compliance by an applicant with
8 this Act as the Administrator shall es-
9 tablish by not later than 180 days
10 after the date of enactment of the En-
11 vironmental Justice Act of 2017;

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

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

22 “(AA) if the applicant
23 is not compliance with this
24 Act, measures the applicant
25 will carry out to achieve that

1 compliance, together with an
2 approximate deadline for
3 that achievement;

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

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

20 “(bb) once such a redemp-
21 tion plan is submitted, determine
22 whether the plan is adequate to
23 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 regula-
10 tions required by section 502(b) shall include a re-
11 quirement that an applicant for a permit or renewal
12 of a permit for a major source shall submit, together
13 with the compliance plan required under this sub-
14 section, a cumulative impacts analysis for each cen-
15 sus tract or Tribal census tract (as those terms are
16 defined by the Director of the Bureau of the Cen-
17 sus) located in, or immediately adjacent to, the area
18 in which the major source is, or is proposed to be,
19 located that analyzes—

20 “(A) community demographics and loca-
21 tions of community exposure points, such as
22 schools, day care centers, nursing homes, hos-
23 pitals, health clinics, places of religious worship,
24 parks, playgrounds, and community centers;

1 “(B) air quality and the potential effect on
2 that air quality of emissions of air pollutants
3 (including pollutants listed under section 108 or
4 112) from the proposed major source, including
5 in combination with existing sources of pollut-
6 ants;

7 “(C) the potential effects on soil quality
8 and water quality of emissions of lead and other
9 air pollutants that could contaminate soil or
10 water from the proposed major source, includ-
11 ing in combination with existing sources of pol-
12 lutants; and

13 “(D) public health and any potential ef-
14 fects on public health of the proposed major
15 source.”.

16 **SEC. 9. IMPLIED RIGHTS OF ACTION AND COMMON LAW**
17 **CLAIMS.**

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

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

23 “(1) DEFINITION OF COVERED ACT.—In this
24 subsection:

1 “(A) IN GENERAL.—The term ‘covered
2 Act’ means—

3 “(i) this Act;

4 “(ii) the Federal Insecticide, Fun-
5 gicide, and Rodenticide Act (7 U.S.C. 136
6 et seq.);

7 “(iii) the Surface Mining Control and
8 Reclamation Act of 1977 (30 U.S.C. 1201
9 et seq.);

10 “(iv) the Marine Protection, Research,
11 and Sanctuaries Act of 1972 (33 U.S.C.
12 1401 et seq.);

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

15 “(vi) the Solid Waste Disposal Act
16 (42 U.S.C. 6901 et seq.);

17 “(vii) the Clean Air Act (42 U.S.C.
18 7401 et seq.);

19 “(viii) the Comprehensive Environ-
20 mental Response, Compensation, and Li-
21 ability Act of 1980 (42 U.S.C. 9601 et
22 seq.); and

23 “(ix) any other Act administered by
24 the Administrator.

1 “(B) INCLUSIONS.—The term ‘covered
2 Act’ includes any provision of an Act described
3 in subparagraph (A) the date of enactment of
4 which is after the date of enactment of this
5 subsection, unless that provision is specifically
6 excluded from this subsection.

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

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

11 “(B) that is implied under—

12 “(i) a covered Act; or

13 “(ii) common law.

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

17 **SEC. 10. PRIVATE RIGHTS OF ACTION FOR DISCRIMINA-**
18 **TORY PRACTICES.**

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

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

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

24 “(b) Any person aggrieved by the failure of a covered
25 entity to comply with this title, including any regulation

1 promulgated pursuant to this title, may bring a civil action
2 in any Federal or State court of competent jurisdiction
3 to enforce such person's rights under this title.”.

4 (b) EFFECTIVE DATE.—

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

8 (2) APPLICATION.—This section, including the
9 amendments made by this section, applies to all ac-
10 tions or proceedings pending on or after the date of
11 enactment of this Act.

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