

November 3, 2022

VIA ELECTRONIC SUBMISSION

Brenda Mallory  
The White House  
Chair, Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

Sharmila L. Murthy  
The White House  
Senior Counsel, Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

**Re: Request for Information: Environmental Justice Scorecard Feedback (Agency/Docket Number: CEQ-2022-0004)**

Dear Chair Mallory and Ms. Murthy:

On behalf of Coming Clean and the Environmental Justice Health Alliance for Chemical Policy Reform (EJHA), two allied networks working to transform the chemical and fossil fuel industries so that they are no longer a source of harm, the Institute for Policy Integrity at New York University School of Law<sup>1</sup> (Policy Integrity) submits these comments<sup>2</sup> in response to the Request for Information (RFI) on the White House Council on Environmental Quality's (CEQ's) Environmental Justice Scorecard (the Scorecard).<sup>3</sup>

EJHA and Coming Clean are made up of grassroots environmental justice groups, health organizations, environmental groups, community and neighborhood organizations and many more constituencies united in working towards a healthy, just and equitable present and future. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through advocacy and scholarship in the fields of administrative law, economics, and public policy.

---

<sup>1</sup> This document does not purport to represent the views, if any, of New York University School of Law.

<sup>2</sup> These comments are also signed on to by 21 additional organizations from around the country (see below).

<sup>3</sup> See Request for Information: Environmental Justice Scorecard Feedback (Agency/Docket Number: CEQ-2022-0004); 87 Fed. Reg. 47,397 (August 3, 2022).

Coming Clean and EJHA fully support President Biden’s mandate in Executive Order 14,008 on *Tackling the Climate Crisis at Home and Abroad* (the Order) to create a Scorecard as a mechanism to hold agencies accountable in their efforts to advance environmental justice; achieve tangible results on the ground in communities; and spur economic opportunity for disadvantaged communities.<sup>4</sup> Specifically, the Order directs the White House Environmental Justice Interagency Council (IAC), chaired by CEQ, to “develop a strategy to address current and historic environmental injustice” and to “develop clear performance metrics, to ensure accountability, and publish an annual public performance scorecard on its implementation.”<sup>5</sup>

Clear performance metrics are needed to ensure accountability. Coming Clean and EJHA have long sought to hold federal agencies accountable to the commitments made to advance environmental justice and make it a central part of their missions, programs, policies and activities. A Scorecard – if properly designed, consistently implemented and fully transparent to the public – will enhance the ability of agencies to advance environmental justice.

According to the RFI, the Scorecard will “highlight” agencies’ activities and measure their progress towards meeting their environmental justice obligations. CEQ states that the Scorecard will have three reporting categories that are focused on:

1. reducing harms and burdens borne disproportionately by communities;
2. delivering investment benefits; and
3. undertaking institutional reform to center community voices in decision making.<sup>6</sup>

CEQ emphasizes that the scorecard will, “assess progress on environmental justice” and specifically “will measure progress towards the Justice40 Initiative,” which seeks to ensure that “40 percent of the overall benefits of certain Federal investments...flow to disadvantaged communities that are marginalized and overburdened by pollution and underinvestment in basic services.”<sup>7</sup> Coming Clean and EJHA fully support the proposed reporting categories, as well as the emphasis on assessing the success of the Justice40 Initiative in the Scorecard.

### **Specific Comments**

1. **Scorecard Must Collect and Evaluate Data on How Actions Taken by Agencies Reduce the Disproportionate Burdens and Harms Based on Race**

Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations<sup>8</sup> and Title VI of the Civil Rights Act of 1964<sup>9</sup> require

---

<sup>4</sup> Exec. Order No. 14008, 86 Fed. Reg. 7619 (February 1, 2021).

<sup>5</sup> *Id.* at 7630.

<sup>6</sup> 87 Fed. Reg. at 47,398.

<sup>7</sup> *Id.*

<sup>8</sup> Exec. Order No. 12898, 59 Fed. Reg. 7629 (February 16, 1994).

<sup>9</sup> 42 U.S.C. § 2000d et seq.

federal agencies to consider the role of race in agency actions. These mandates to consider race are supported by decades of research demonstrating that populations most affected by environmental hazards are people of color and low income.<sup>10</sup> For example, a recent study found that exposure to air pollution varied more by race and ethnicity than by income: people of color were 2.4 times as likely to be exposed to heavy pollution than white people of similar income levels.<sup>11</sup> As one of the primary goals of the Scorecard is to address environmental justice by “reducing harms and burdens borne disproportionately by communities,” then it must include the collection and evaluation of racial distributional data to measure whether agency actions are closing the disparities or exacerbating them.<sup>12</sup> Specifically, the Scorecard should reflect how investment benefits and reductions in harm break down by socioeconomic factors and race.

## **2. Scorecard and Climate and Economic Justice Screening Tool (CEJST)**

The Scorecard must work in conjunction with the CEJST. Accordingly, the Scorecard must use clear and consistent definitions of “disadvantaged communities” and “investment benefit.” Without consistent metrics and definitions across federal agencies, it will be difficult to see how agencies are living up to their environmental justice commitments. Because many of the issues the Scorecard raises overlap with issues raised in the CEJST, Coming Clean and EJHA request that CEQ refer to the comments<sup>13</sup> they made regarding CEQ’s Request for Information on the CEJST.<sup>14</sup>

The CEJST should be used as a tool in establishing a baseline for the Scorecard’s evaluation of whether agency actions are in fact “reducing harms and burdens borne disproportionately by communities.” In addition, at least some, if not all, elements of the Scorecard should be visualized on the CEJST. For example, the Scorecard can be integrated into the CEJST by including a layer on the map that shows where the funds from each of the Justice40 covered programs were delivered and spent and what benefits resulted from those investments. When environmental justice communities want to look up their city and state, the CEJST could show them the amount of dollars delivered to their census tract and from which covered program, as

---

<sup>10</sup> R. D. Bullard, Solid waste sites and the Black Houston community. *Soc. Inquiry*. 53, 273–288 (1983); P. Mohai, D. Pellow, J. T. Roberts, Environmental justice. *Annu. Rev. Env. Resour.* 34, 405–430 (2009); J. D. Brender, J. A. Maantay, J. Chakraborty, Residential proximity to environmental hazards and adverse health outcomes. *Am. J. Public Health* 101, S37–S52 (2011); A. Hajat, C. Hsia, M. S. O’Neill, Socioeconomic disparities and air pollution exposure: A Global Review. *Curr. Environ. Heal. Rep.* 2, 440–450 (2015); P. Mohai, R. Saha, Which came first, people or pollution? A review of theory and evidence from longitudinal environmental justice studies. *Environ. Res. Lett.* 10, 125011 (2015); and J. Liu, L. P. Clark, M. Bechle, A. Hajat, S.-Y. Kim, A. Robinson, L. Sheppard, A. Szpiro, J. D. Marshall, Disparities in Air Pollution Exposure in the United States by Race-Ethnicity and Income, 1990–2010. *ChemRxiv Preprint*. 10.26434/chemrxiv.13814711.v1 (2021).

<sup>11</sup> Tessum CW, Paoletta DA, Chambliss SE, Apte JS, Hill JD, Marshall JD. PM2.5 pollutants disproportionately and systemically affect people of color in the United States. *Sci Adv*. 2021 Apr 28;7(18):eabf4491. doi: 10.1126/sciadv.abf4491. PMID: 33910895.

<sup>12</sup> 87 Fed. Reg. at 47,398.

<sup>13</sup> Comment letter of Coming Clean and Environmental Justice Health Alliance on CEQ’s Request for Information: Climate and Economic Justice Screening Tool Beta Version (Agency/Docket Number: CEQ-2022-0002) submitted on May 25, 2020.

<sup>14</sup> Policy Integrity did not submit comments on the CEJST and is not a signatory to the Coming Clean and EJHA comment letter.

well what percentage of total covered spending those amounts represent (e.g., X% for census tract, X% for County, X% for State, X% for U.S.). Displaying the Scorecard information by census tract would ensure consistency with the CEJST and would allow residents to visualize their specific area, since community make up and condition can vary significantly across a city or county.

### **3. Defining Success**

For the Scorecard to be transparent and meaningful, CEQ must clearly define the primary metrics by which success will be measured. In the Order, the President states that agencies “shall make achieving environmental justice part of their mission by developing programs, policies and activities *to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities*” (emphasis added).<sup>15</sup> Reductions in pollution and improvements in health and quality of life<sup>16</sup> are key metrics that environmental justice communities use to determine whether positive progress is being made. Therefore, the Scorecard should primarily assess whether and to what extent a federal agency’s actions have resulted in or contributed to a reduction of pollution and environmental burdens in environmental justice communities and/or resulted in estimated positive health outcomes. It is not sufficient to simply assume that a “benefit” (e.g. jobs, access to clean energy, etc.) has been conferred upon a community simply because of monetary flows.

### **4. Baseline Analysis and Environmental Justice Infrastructure within Agencies**

In the Scorecard’s initial baseline analysis, there should be a strong focus on evaluating whether agencies have the basic and essential infrastructure in place to achieve the overall environmental justice goals set by the Order. Coming Clean and EJHA recommend a checklist set of actions (see below) that would be included in the reporting category entitled, “Centering Justice in Decision Making.” The RFI states that this category would “capture measures taken to reform agency decision making to incorporate the perspectives, priorities, and lived experiences of environmental justice communities.”<sup>17</sup> Without implementing the measures in this category, it will be difficult for any agency to achieve the goals set out in the other reporting categories.

It is critical that agency environmental justice actions are centered on community voices in action identification, selection, implementation, and evaluation. Communities should be meaningfully involved in each step of the process and the process for community involvement should be accessible. It will be difficult for an agency to achieve these goals without first establishing internal structures and systems focused on bringing the voices of environmental justice communities into the decision-making process.

---

<sup>15</sup> See *supra* note 7 at 7629.

<sup>16</sup> See for example, <https://www.cdc.gov/hrqol/index.htm>.

<sup>17</sup> 87 Fed. Reg. at 47,398.

Accordingly, every agency should implement the following environmental justice infrastructures:

- 1) Adoption of an agency-wide environmental justice plan and strategy (as required by standing Presidential executive orders) with input from WHEJAC and the IAC that uses the federal definition of environmental justice;
- 2) Adoption of environmental justice community outreach and engagement plans where the goal is to ensure that community engagement is principled, accessible and results in meaningful involvement and outcomes that significantly impact decision making in the agency;
- 3) Active participation and membership in inter-agency entities designed to cultivate collaboration on environmental justice issues (e.g., IAC, Environmental Protection Agency's Interagency Work Group on Environmental Justice, etc.);
- 4) Creation of an Office of Environmental justice<sup>18</sup> that reports directly to the Administrator or Secretary of the Agency and coordinates agency efforts to address the needs of environmental justice communities by decreasing environmental burdens, increasing environmental benefits and working collaboratively with communities through financial and technical assistance;
- 5) Appointment of senior-level environmental justice advisor that provides the agency Administrator with strategic and substantive counsel on environmental justice issues; and
- 6) Creation of an environmental justice advisory committee to advise the agency.

An agency's failure to complete the above actions should be reflected in the initial baseline analysis and should weigh heavily in any subsequent Scorecard assessments of its performance.

#### **5. Collaborative Identification, Selection, and Evaluation of Federal Agencies' Activities**

CEQ, IAC, and agencies should work with environmental justice communities to identify and select activities that will be evaluated in the Scorecard. These activities should also be scored and evaluated in collaboration with communities. Each agency's methodology for calculating benefits to communities should be made public for the sake of transparency and accountability.

#### **6. Collaborative Identification and Evaluation of Expected Consequences of Federal Agencies' Activities**

---

<sup>18</sup> The Environmental Protection Agency recently created a joint Office of Environmental Justice and Office of External Civil Rights, which Coming Clean and EJHA support and recommend other agencies do as well to ensure that environmental justice and civil rights enforcement are jointly pursued. See <https://www.epa.gov/newsreleases/epa-launches-new-national-office-dedicated-advancing-environmental-justice-and-civil>.

Before initiating any activity, CEQ, IAC, agencies, and affected communities should identify its expected benefits and costs.<sup>19</sup> Following identification of these possible impacts, data collection for tracking them should commence. After analysis using these data, the Scorecard should incorporate estimates reflecting the realized consequences of the agency's activities.

## **7. Coordinated Data Collection, Analysis, and Reporting Efforts**

High-quality and sufficiently granular data, including socio-demographic data as well as data of readings of pollution exposure levels, are critical for quantitative analysis of agencies' activities. CEQ and IAC should coordinate agencies' data collection, analysis, and reporting efforts.<sup>20</sup> These data collection, analysis, and reporting activities should also receive scores. Agencies best equipped to do so should collect and report high-quality and sufficiently detailed data for planned interagency analysis efforts. Coordinating collection of detailed and quality data will be necessary for efficiently acquiring information needed for quality analyses. Likewise, coordinating agencies' analysis and reporting efforts could facilitate interagency efficiency by preventing redundant efforts.

*Quantitative analyses*, including causal and distributional analysis, should form the foundation upon which agencies will be held accountable. A distributional analysis should occur before a rule or action is initiated and causal and distributional analyses should occur afterwards using data gathered after the activity has been implemented.<sup>21</sup> Both can contribute to the Scorecard, as the former especially can help to identify expected costs and benefits, which will help guide data collection and policymaking,<sup>22</sup> while the latter can help to estimate the impacts of an activity and so will aid in planning future activities. *Distributional analysis* should be incorporated in both, as it helps to assess how benefits and costs are dispersed in society.<sup>23</sup> For example, incorporating distributional analysis in cost-benefit analysis can illuminate whether a proposed action might ameliorate or exacerbate, for example, inequality in exposure to air pollution across different demographic groups. Quantitative tools common to distributional

---

<sup>19</sup> For example, environmental justice communities have voiced concerns about the negative consequences of carbon capture sequestration and hydrogen hubs on their communities, as well as the potential of gentrification from investments. See EPA, EPA Launches New National Office Dedicated to Advancing Environmental Justice and Civil Rights, September 24, 2022, <https://www.eenews.net/articles/ej-communities-are-wary-as-ccs-racks-up-policy-wins>. See <https://comingcleaninc.org/latest-news/in-the-news/coming-clean-and-the-environmental-justice-health-alliance-celebrate-historic-investments-in-environmental-justice-warn-against-harmful-trade-offs-included-in-the-inflation-reduction-act-of-2022>.

<sup>20</sup> These data collection, analysis, and reporting activities should also receive scores to acknowledge their importance in advancing environmental justice and to acknowledge the significant demand on resources that they present. Further, receiving scores for these activities will inform agencies how to improve them over time.

<sup>21</sup> See, e.g., Scott Cunningham, *Introduction*, in *Causal Inference: the Mixtape* (2021), <https://perma.cc/4BK8-8NGL>.

<sup>22</sup> Though causal analysis must be conducted after an activity occurs, data collection priorities should be driven by the categories of expected costs and benefits outlined in cost-benefit analysis and therefore initiated in advance. Conducting causal analysis well requires detailed data and careful planning, and the value of the insights it can provide should motivate interagency prioritization of both data collection and coordination to facilitate its use.

<sup>23</sup> See, e.g., Jack Lienke et al., *Making Regulations Fair: How Cost-Benefit Analysis Can Promote Equity and Advance Environmental Justice* (2021), <https://perma.cc/J938-7ZMG>.

analysis can ultimately be used to assess how an activity affected the distribution of costs and benefits.

Agencies should use causal analysis where possible to show to what extent an agency activity led to an observed outcome, be it cost or benefit.<sup>24</sup> High-quality causal analysis would estimate the impact of an agencies' activities on scorecard metrics (e.g., it can be employed to determine if cleanup in a community improved their health outcomes, or whether a regulation lowered pollution concentrations). If an agency reports that pollution levels decreased in a community after they completed an activity, causal analysis can help the agency determine whether pollution decreased due to the activity itself or decreased due to an external factor; indeed, the agency and the public should know if pollution decreased not because of but perhaps in spite of an activity (i.e., if an agency's activity actually led to increases in pollution but other factors led to its overall decrease). Causal analysis allows for more clear understanding of the contribution an activity made to observed costs and benefits, if any.

Causal analysis can be used in conjunction with inequality metrics as well. Provided agencies collect sufficient data, they can track estimates of the degree of inequality of, for example, pollution exposure using metrics that can assess income inequality like the Gini coefficient.<sup>25</sup> Agencies could assess, for example, the impact of an activity on pollution exposure inequality. Using distributional analysis tools and causal analysis together could improve understanding of the equity consequences of agency activity.

## **8. Reporting Data and Results on the Publicly Accessible Scorecard Website**

To encourage accountability and effective agency action, the data and analyses should be reported alongside the Scorecard to enhance accountability and facilitate evidence-based planning of future activities. Agencies should track data relevant for evaluating their activities (e.g., investment tracking, community engagement, health outcomes, particulate-matter concentrations, access to basic services). They should also make this data made available on a publicly accessible website in a form that facilitates the public conducting their own analysis.

When possible, causal analysis should be used in the Scorecard to better hold agencies accountable for their activities. For example, if an analysis' estimates indicate that an agency's investment alleviated disproportionate environmental and health burdens, the agency's action

---

<sup>24</sup> Causal analysis, more precisely causal inference in this setting, allows for a more clear understanding of the relationship between two variables. Indeed, Scott Cunningham explains in, *Introduction, in Causal Inference: the Mixtape* (2021), <https://perma.cc/4BK8-8NGL> ("correlations, particularly in observational data, are unlikely to be reflective of a causal relationship. . . But weirdly enough, sometimes there are causal relationships between two things and yet no observable correlation").

<sup>25</sup> Metrics like the Gini coefficient were originally used to assess income inequality, but have also been used to examine health inequality and in pollution exposure contexts; the coefficient, which can take values between zero and one, indicates higher inequality as it increases in value. See, e.g., Jack Lienke et al., *Making Regulations Fair: How Cost-Benefit Analysis Can Promote Equity and Advance Environmental Justice* (2021), <https://perma.cc/J938-7ZMG>.

should receive a higher score than an action that failed to help. Incorporating estimates that show the impacts of agency activity in scoring will encourage accountability and better incentivize activities and investments that result in positive environmental justice outcomes.

In addition to the final scores, community feedback on agencies' activities should be displayed on the website. It should be clear on the website and Scorecard which agencies are responsible for which activities and the environmental justice communities that agencies expect to benefit from each activity. The information on the website should be easily accessible and available in multiple languages.

## **9. Cumulative Impacts**

The CEQ should require agencies to account for cumulative impacts on environmental justice communities from multiple pollution sources, at least of any new federally funded programs and projects in a community. Different agencies and even different offices within the same agency may be working very differently in/with a community, or even working at cross purposes if agencies are not coordinating with one another.

## **10. Ground Truthing Scorecard Items and Results**

There must be an opportunity for communities to meaningfully engage in the ground truthing of the Scorecard. Ground truthing is an established scientific process for bridging the data and information gaps between technical work and the expert knowledge of local residents in environmental justice communities.<sup>26</sup> Regarding claimed investment benefits by an agency in the Scorecard, there should be an opportunity for communities to ground truth by fact checking whether they actually did receive the benefits from federal investments that the agency is claiming or the Scorecard is indicating. Through the use of surveys and solicitation of public comments, the Scorecard should also include the input of environmental justice communities prior to the issuance of a final score for each agency and the input should be made public on the Scorecard website.

## **11. Relationship to the Government Performance and Results Act (GPRA)**

Enacted in 1993, GPRA was designed to improve program management throughout the Federal government.<sup>27</sup> Agencies are required to develop a five-year strategic plan outlining its mission, long-term goals for the agency's major functions, performance measures, and reporting results. In addition to the strategic plan, agencies submit an annual performance report to the Office of

---

<sup>26</sup> See Sadd, J., Morello-Frosch, R., Pastor, M., Matsuoka, M., Prichard, M., & Carter, V. (2014). The truth, the whole truth, and nothing but the ground-truth: Methods to advance environmental justice and researcher–community partnerships. *Health education & behavior*, 41(3), 281-290. Also see Sadd, J. L., Hall, E. S., Pastor, M., Morello-Frosch, R. A., Lowe-Liang, D., Hayes, J., & Swanson, C. (2015). Ground-truthing validation to assess the effect of facility locational error on cumulative impacts screening tools. *Geography Journal*, 2015.

<sup>27</sup> Government Performance and Results Act of 1993, Pub. L. No. 103-62, S. 20, 103rd Cong. and GPRA Modernization Act of 2010, Pub. L. No. 11-352, S. 3853, 111th Cong.

Management and Budget with established fiscal year performance goals, objectives on how to achieve these goals, and an explanation of how performance is measured and verified.<sup>28</sup>

Since the GRPA's passage and update in 2010, the application of its requirements across all agencies has been inconsistent.<sup>29</sup> These reporting requirements track closely with what CEQ may be requesting from agencies for the Scorecard and may also represent similar challenges for agencies. The CEQ and IAC should examine how the Scorecard may relate to the GPRPA requirements and how lessons learned regarding poor agency performance/compliance under the GPRPA may be instructive in ensuring the successful implementation of the Scorecard.

## **Conclusion**

While no Scorecard will be a perfect evaluation of the federal government's actions (or lack thereof) on environmental justice issues, Coming Clean and EJHA support and applaud this historic attempt to create transparency and accountability. To reiterate, Coming Clean and EJHA believe that the key metric the Scorecard should weigh heavily in every reporting category and overall is whether a federal agency's actions have resulted in or contributed to a reduction of pollution and environmental burdens in environmental justice communities and/or resulted in estimated positive health outcomes in environmental justice communities. To achieve that goal, it is critical that the Scorecard include as much qualitative and quantitative data and that the data collection is done with the full involvement and input of environmental justice communities, who have the lived experience to determine whether agency actions are resulting in tangible results on the ground. We look forward to working with CEQ and the IAC as the Scorecard continues to develop.

Sincerely,

Al Huang, Director of Environmental Justice, Institute for Policy Integrity, NYU School of Law\*  
Chelsea Pardini, Economic Fellow, Institute for Policy Integrity, NYU School of Law\*

*On behalf of:*

Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)  
Coming Clean

*Signed on to by:*

7 Directions of Service  
Alaska Community Action on Toxics  
Alianza Nacional de Campesinas, Inc.  
As You Sow  
Black Women for Wellness  
Breast Cancer Prevention Partners (BCPP)

---

<sup>28</sup> *Id.*

<sup>29</sup> Long, Edward & Franklin, Aimee. (2014). The Paradox of Implementing the Government Performance and Results Act: Top-Down Direction for Bottom-Up Implementation. *Public Administration Review*. 64. 309 - 319. 10.1111/j.1540-6210.2004.00375.x.

Center for Environmental Health  
Clean+Healthy  
Concerned Citizens of Wagon Mound and Mora County  
Defend Our Health  
Delaware Concerned Residents for Environmental Justice  
Farmworker Association of Florida  
Harambee House, Inc. / Citizens for Environmental Justice  
Investor Advocates for Social Justice  
Los Jardines Institute  
Moms for a Nontoxic New York  
People Organized in Defense of Earth and her Resources (PODER) Austin  
Toxic Free North Carolina  
Union of Concerned Scientists  
Until Justice Data Partners  
Women's Voices for the Earth

*For questions about this document, please contact:*

Al Huang, Director of Environmental Justice | [al.huang@nyu.edu](mailto:al.huang@nyu.edu)  
Institute for Policy Integrity at NYU School of Law  
139 MacDougal Street, 3rd Floor, New York, NY 10012

\*No part of this document purports to represent the views, if any, of New York University School of Law.