

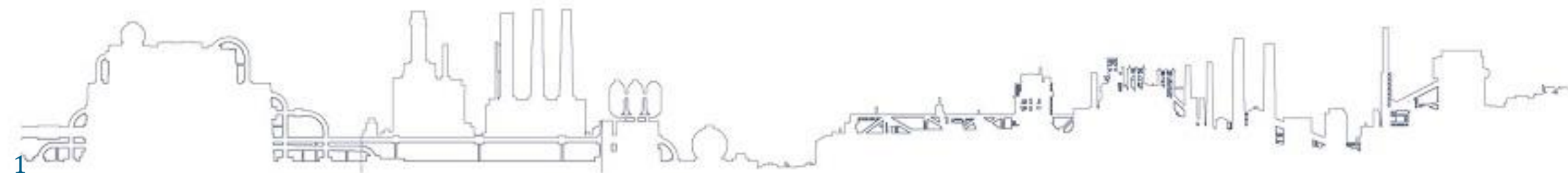
# What You Need to Know About Environmental Justice

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# Today's Agenda

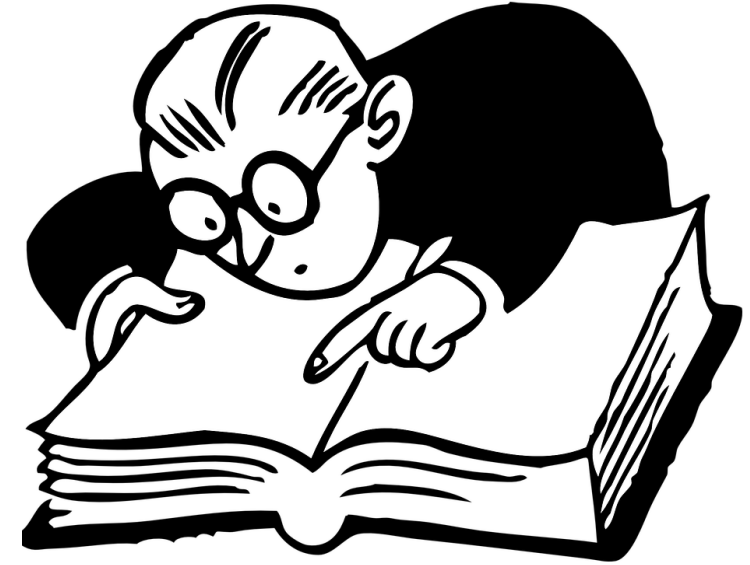
- ❑ Defining Environmental Justice (EJ)
- ❑ Biden administration plans and activities
- ❑ Current federal enforcement options
- ❑ Environmental Justice Tools
- ❑ State programs
- ❑ Public Awareness and Activism
- ❑ Examples of EJ impact on permitting
- ❑ How to prepare / What's next?



# What is Environmental Justice?

There are several definitions of Environmental Justice from state to state, but EPA's official definition is:

"The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."



# Biden Administration – New Focus

- 1/27/21 Executive Order (EO 14008), Environmental Justice a key facet of the administration’s environmental policy
- EO defined an “All of Government Approach”. Environmental Justice and climate change impacts considered as part of all government activities
- “Justice 40” plan, targets clean energy investments: goal of delivering 40 percent of the benefit to overburdened communities
- “Environmental Justice Mapping and Data Act” introduced: legislative framework, and funding to support EO 14008
- Commitment to use a more integrated approach using EJSCREEN as the primary tool for identifying EJ areas



# Biden Administration – New Focus (cont.)

- White House Environmental Justice Advisory Council (WHEJAC) first virtual public meeting on 3/30/21
  - Primary focus was EJ aspect of the 1/27/21 “all of government” executive order
- On May 13<sup>th</sup>, WHEJAC approved recommendations advancing core parts of the Biden EJ Agenda and the Justice 40 plan:
  - Define aspects of what is an overburdened community, what is considered an investment, and what is considered a benefit
  - Recommendations will be the basis of the administration’s final policy

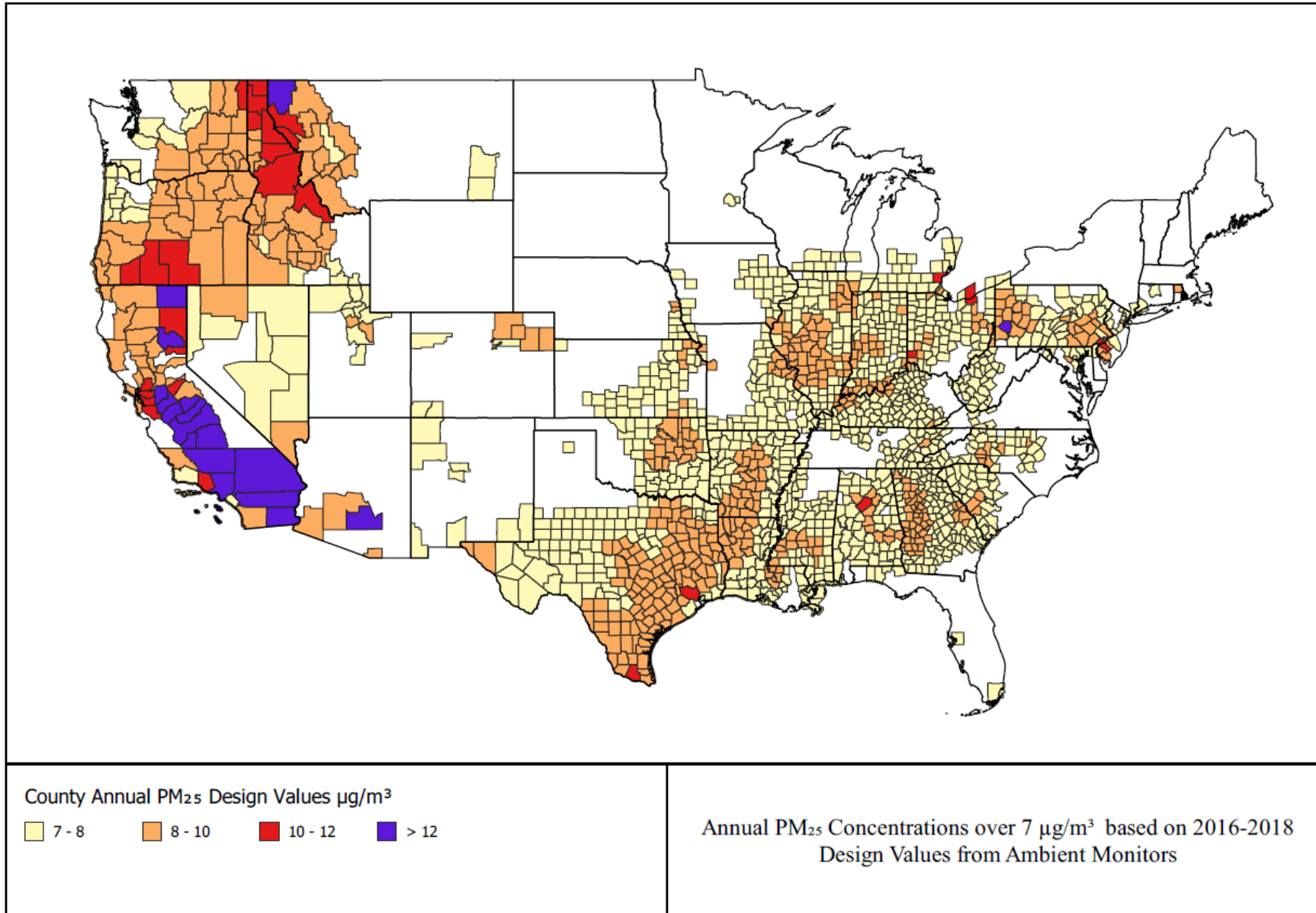
# Clean Future Act

Draft CLEAN Future Act legislation introduced on March 2nd:

- Defines an overburdened census tract:
  - Has a greater than 100 in 1,000,000 total cancer risk, or
  - Has an annual mean concentration of PM<sub>2.5</sub> of greater than 8 µg/m<sup>3</sup>, over the most recent 3-year period – In 2019, the national average was 7.65 µg/m<sup>3</sup>!
- After enactment, no permit shall be granted for a proposed major source in an overburdened census tract
- After January 1, 2025, no permit renewal for a major source in an overburdened census tract



# US Annual PM<sub>2.5</sub> Concentrations (2016-2018)



Source: Alpine Geophysics, 2021

# Civil Rights Act of 1964

## Title VI of the Civil Right Act states:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

- ❑ Possible avenue for EPA to pressure states on EJ issues
- ❑ Threat of lost federal funding
- ❑ Examples:
  - Missouri DNR / Kinder Morgan
  - TCEQ / Oxbow Calcining





# Clean Air Act (CAA) Section 303

- Section 303 of the CAA: Emergency Powers
  - Imminent and substantial endangerment to public health/welfare/environment
  - Allows for immediate shutdown of suspect source
  - Shutdown order in effect for no more than 60 days
- Rarely invoked, but twice in May 2021
  - Limetree Bay – Virgin Islands petroleum refining
  - New Indy Paper Mill – South Carolina



# Cumulative Risk Assessments

- ❑ Not a new idea: Initially floated by Bush administration in 2003, raised in Obama's 2014 environmental agenda but stalled
- ❑ Assesses cumulative risk from overlapping environmental hazards:
  - Air quality
  - Water
  - Chemical mixtures
  - Non-chemical stressors (higher at-risk local population, etc.)
- ❑ Not limited to just your facility
- ❑ Draft guidance peer-reviewed within EPA in July 2021
- ❑ EPA expects to release guidelines by the end of 2021

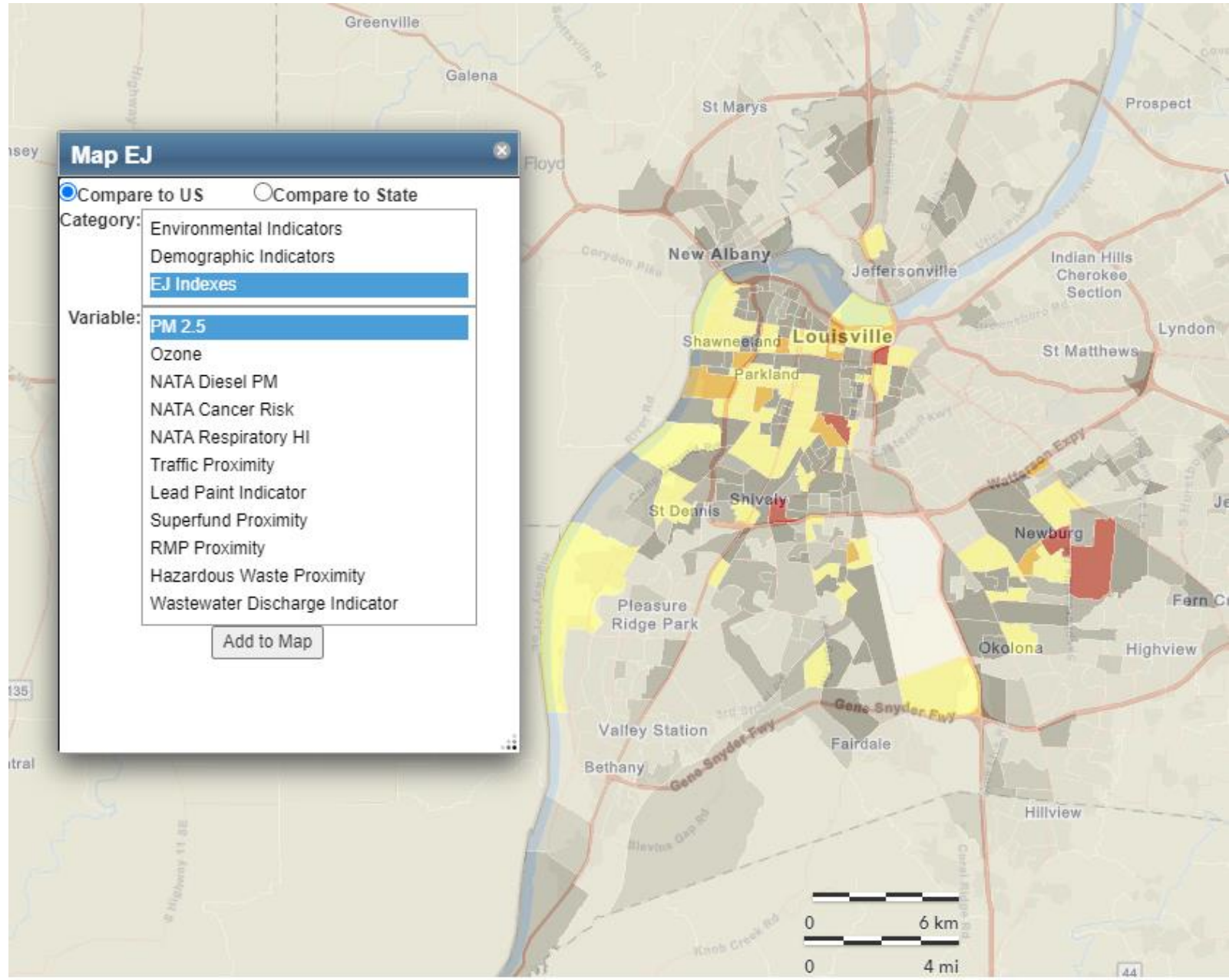


# EJSCREEN

- EJ mapping tool combining environmental and demographic indicators on visual display
- Covers all of United States
- 11 Environmental Indicators: air toxics, particulate matter, ozone, traffic volume, lead paint, proximity to hazardous waste facilities, etc.
- 6 Demographic Indicators: % low income, % people of color, % less than high school educated, under age 5, over age 64, non-English speaking

# EJSCREEN (cont.)

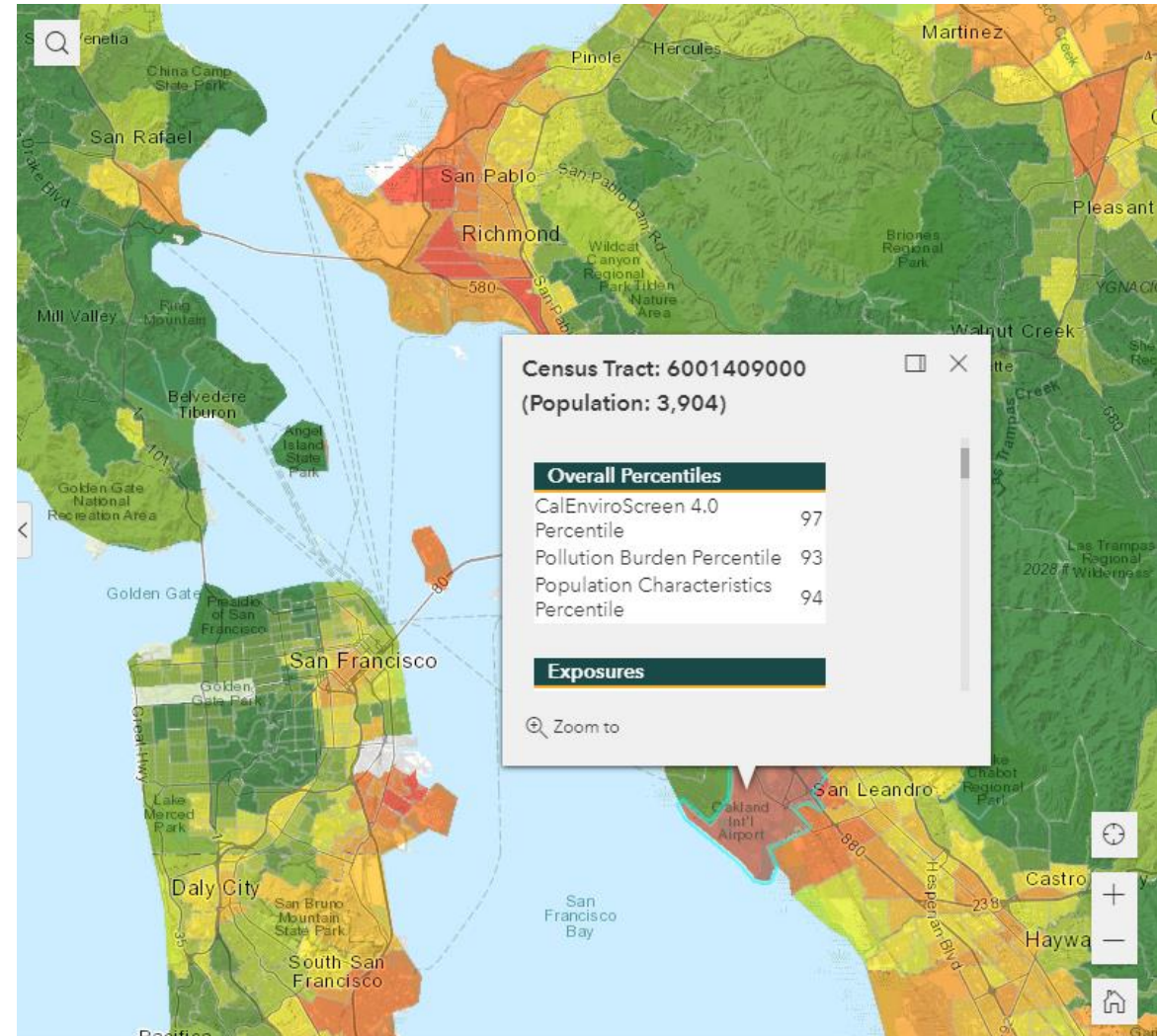
- Environmental Indicators (EI) and Demographic Indicators (DI) cross-referenced to generate 11 EJ Indices, one for each EI. Can be used to classify communities as overburdened





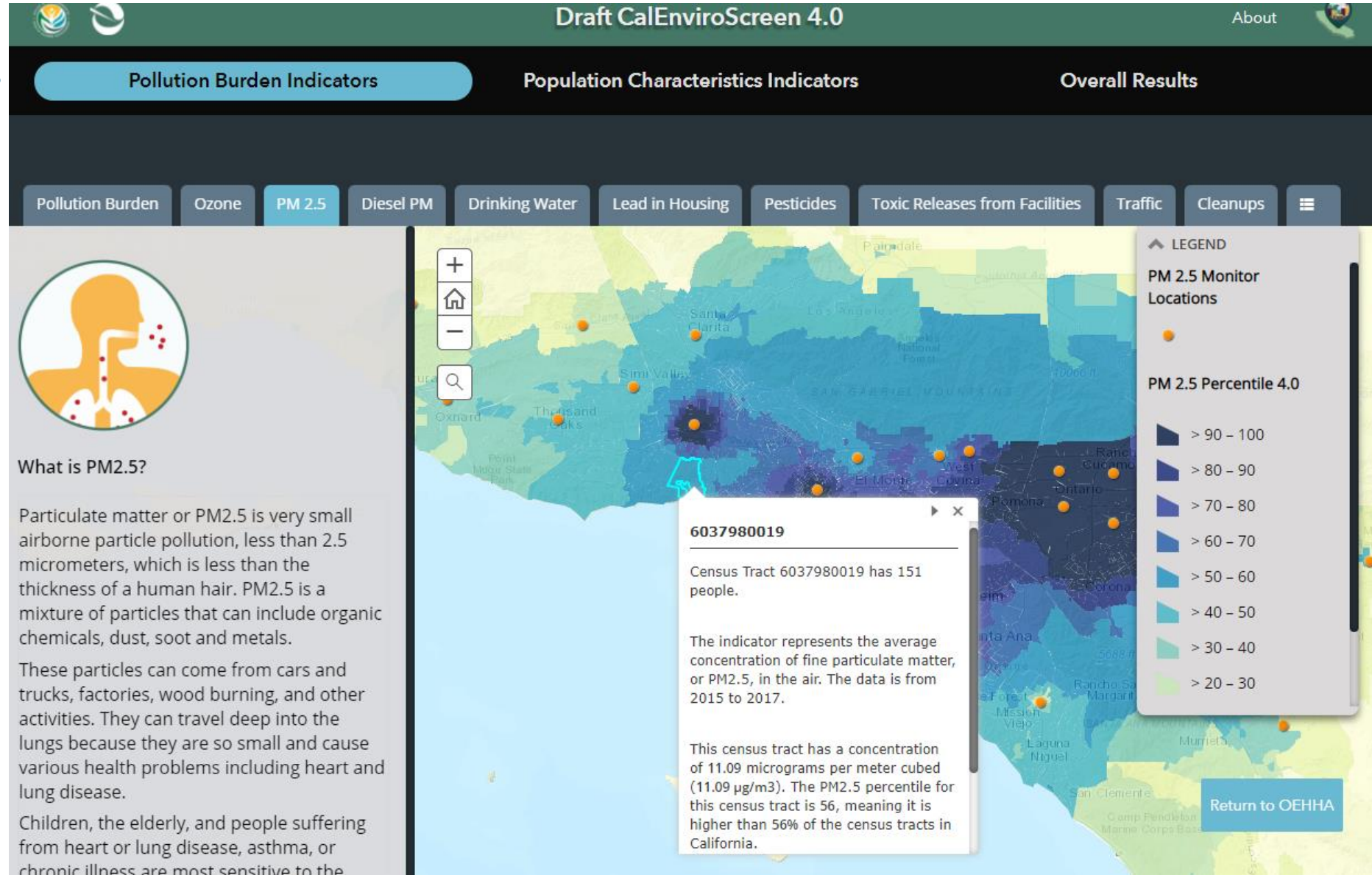
# CalEnviroScreen

- ❑ California Environmental Justice mapping tool
- ❑ Uses environmental, health, and socioeconomic information to produce scores for each census tract
- ❑ 21 indicators combined into a single cumulative impact score
- ❑ Potential model for future version of EJSCREEN



# CalEnviroScreen (Cont.)

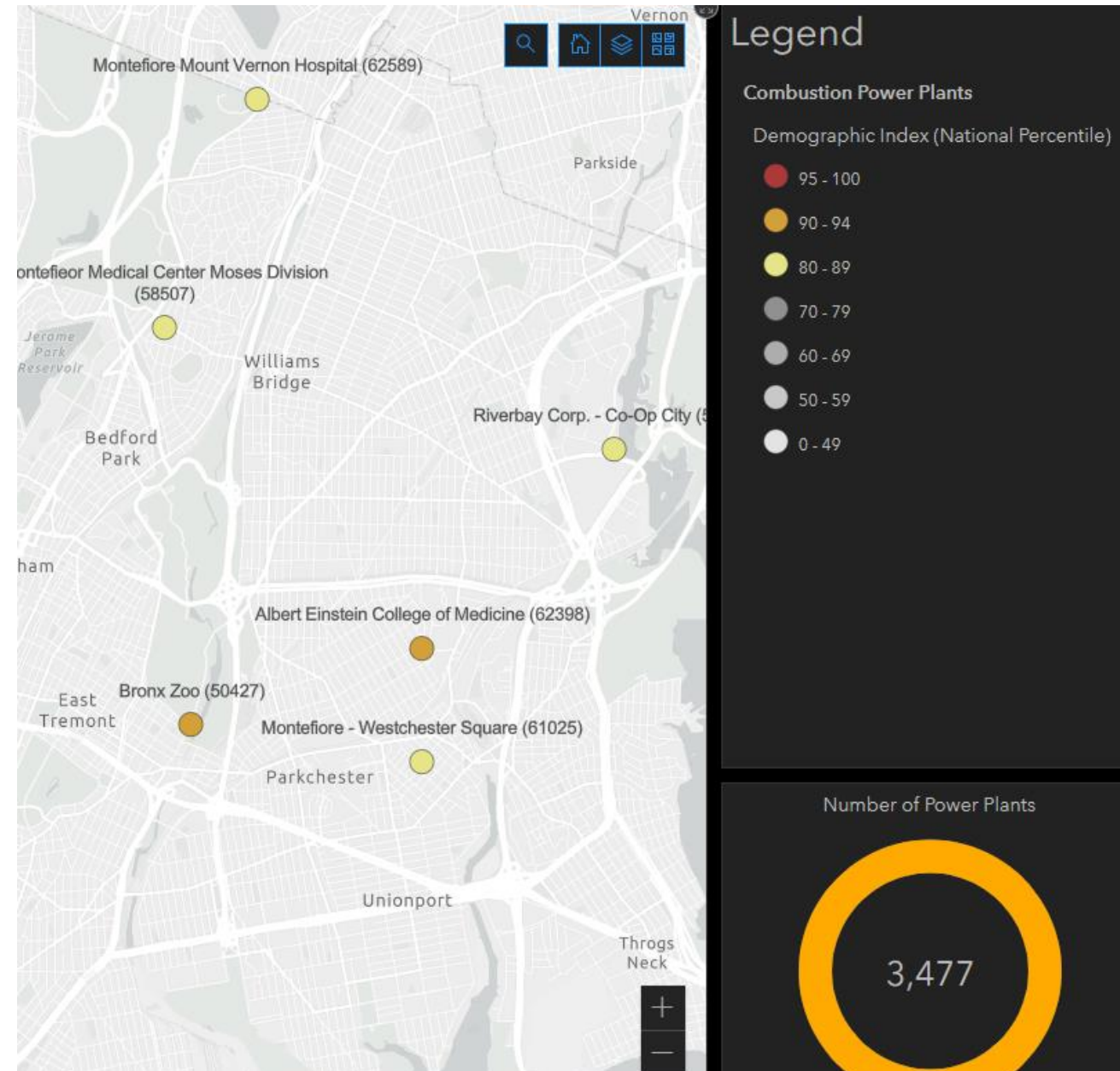
- In addition to cumulative scores detailed maps of individual indicators census tract
- Data is more up to date than EJSCREEN





# Power Plants & Neighboring Communities Tool

- ❑ Maps 3700+ power plants and presents data on nearby overburdened communities
- ❑ Definition of power plant is loose: any source that contributes > 1 MW to the grid
- ❑ Data drawn from EJSCREEN, CAMD, ECHO, and CDC Public Health Tracking Tool
- ❑ Could be propagated to other sectors (oil and gas, chemical, etc.)



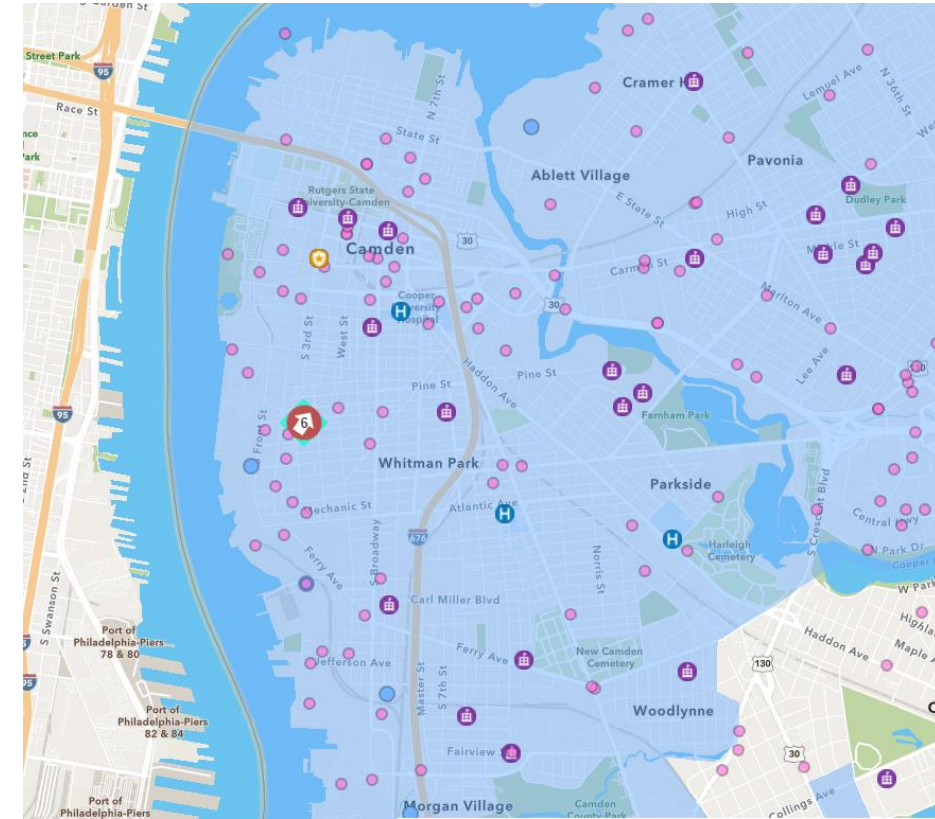
# State Programs

- ALL4 is tracking state and federal EJ issues for several trade organizations
- Includes outreach to all 50 states and US EPA to gather data on what EJ activities are under way or planned
- Work product is a living document with information by state on their regulations, programs, EJ contacts, and rulemaking plans.
- Initial findings include:
  - 10 states with active EJ policy or rulemaking in progress
  - 16 with some EJ statements or outreach programs but no rulemaking yet
  - 24 with no EJ policy or plans in development
  - Many states utilize EJSCREEN to track overburdened communities within their state



# State Programs: New Jersey

- ❑ First state to require, via legislation, evaluation of EJ for permit applications
- ❑ NJ has their own mapping tool to identify overburdened communities and all sources, major and minor, nearby
- ❑ EJ Legislation was signed in Fall 2020 to take effect in January 2021, not technically codified yet but already in practice
- ❑ All permits, including renewals, located in overburdened communities, are subject to public comment period of 60 days (formerly 30) and potentially hearings





# State Programs: California

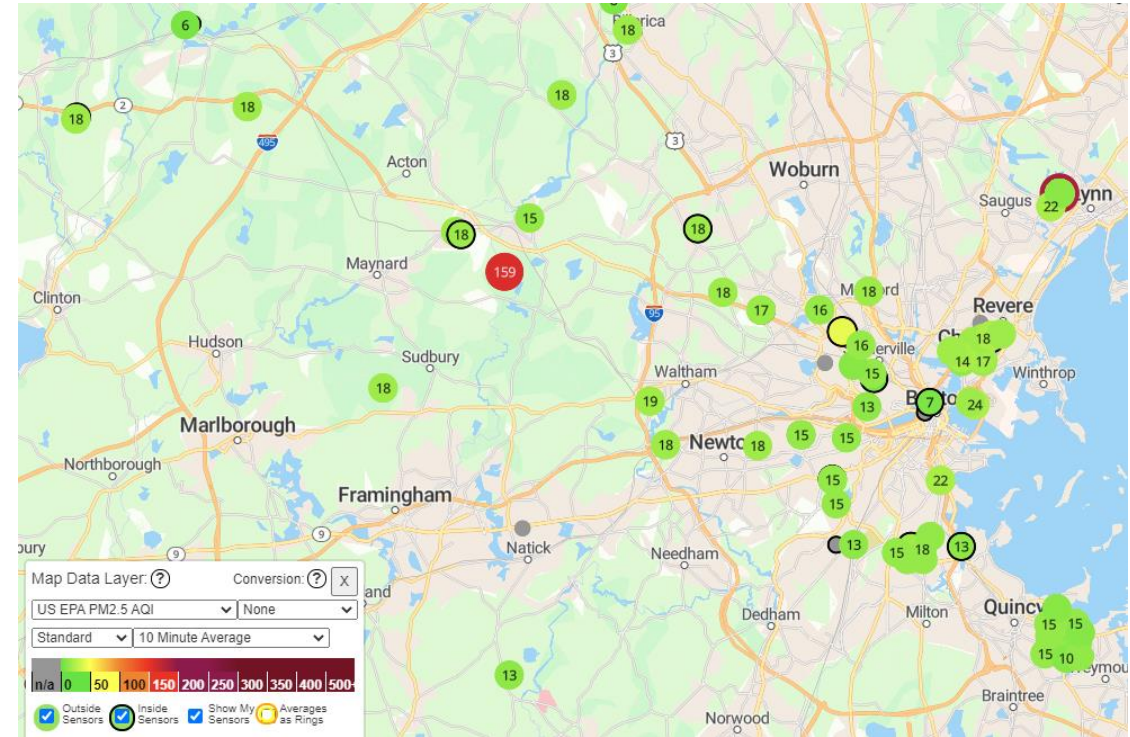
New legislation just proposed: AB1001 would:

- Use EJ indicators during siting and permit applications
- Require the state to publish and maintain a list of overburdened communities
- Mandates the upgrade of CalEnviroScreen, the state's proprietary EJ screening tool
- By July 2022, all permit applicants must perform an Environmental Justice Impact Statement (EJIS), conduct a public hearing in the overburdened community, and submit the EJIS to the permitting agency, which would then deny, or require additional conditions to the permit if it determined that the overburdened community will be impacted more than others



# Public Awareness / Activism

- Public activism around industrial projects is at an all time high
- EJ concerns provide a wide lane for intervener attacks
- Proliferation of hand-held, inexpensive monitors allows public groups to do their own monitoring
  - Purple Air
  - Data accuracy question
  - Context



# Environmental Justice Permit Challenges

While most states don't have formal EJ rules related to permits, there are numerous examples of EJ issues impacting projects:

- ❑ In Illinois, on EPA recommendation, Illinois EPA and the governor have suspended a previously granted permit to Reserve Management Group for further EJ review
- ❑ In Pennsylvania, a greenfield gas-fired power plant project received a draft permit after 2.5 years of delays and additional meetings specifically around EJ in addition to the official permit application hearings
- ❑ In Michigan, EPA Region 5 has asked EGLE to consider asking an asphalt company to move its proposed location rather than building in an already overburdened area





# What's next in EJ?

- ❑ Biden administration continues to appoint staff with expertise in EJ within EPA and other government agencies
- ❑ Virtually all communications related to environmental policy intertwine EJ and Climate Change
- ❑ May 27<sup>th</sup> deadline for agencies to submit compliance plans for the Justice 40 initiative
- ❑ TRI to be updated to make it easier for communities to access data
- ❑ EJSCREEN to be enhanced, perhaps like the CA tool. Next release planned for December



# Future Requirements?

- ❑ Additional air modeling, potentially against more stringent standards than normally required
- ❑ Fence line monitoring of select toxics and/or PM<sub>2.5</sub>
- ❑ Environmental Justice impact studies
- ❑ Additional permit requirements
- ❑ Additional public hearings and outreach programs
- ❑ Longer public comment periods and permitting delays

# How should you prepare?

- ❑ Keep tabs on regulatory and policy developments
- ❑ Know your facilities' Environmental Justice footprint: Are your plants close to overburdened communities? What does EJSCREEN output look like around your facilities?
- ❑ Do your facilities have good relationships with neighbors? Plan to factor in time for community outreach before any expansion projects at those facilities, expect comments on the permit.
- ❑ Keep accurate records and improve your inventory of emissions for “hot topic” pollutants ex.: PM<sub>2.5</sub>, air toxics, etc.
- ❑ Consider performing your own risk analysis as part of project planning, prior to submitting the permit application via air dispersion modeling or monitoring



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# Questions or Comments?

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