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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Environmental Justice Act of 2019”.

SEC. 2. PURPOSES.

The purposes of this Act are—
(1) to require Federal agencies to address and eliminate the disproportionate environmental and human health impacts on populations of color, communities of color, indigenous communities, and low-income communities;

(2) to ensure that all Federal agencies develop and enforce rules, regulations, guidance, standards, policies, plans, and practices that promote environmental justice;

(3) to increase cooperation and require coordination among Federal agencies in achieving environmental justice;

(4) to provide to communities of color, indigenous communities, and low-income communities meaningful access to public information and opportunities for participation in decision making affecting human health and the environment;

(5) to mitigate the inequitable distribution of the burdens and benefits of Federal programs having significant impacts on human health and the environment;

(6) to require consideration of cumulative impacts in permitting decisions;
(7) to clarify congressional intent to afford rights of action pursuant to certain statutes and common law claims; and

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

SEC. 3. DEFINITIONS.

In this Act:

(1) Administrator.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) Community of color.—The term “community of color” means any geographically distinct area the population of color of which is higher than the average population of color of the State in which the community is located.

(3) Community-based science.—The term “community-based science” means voluntary public participation in the scientific process and the incorporation of data and information generated outside of traditional institutional boundaries to address real-world problems in ways that may include formulating research questions, conducting scientific experiments, collecting and analyzing data, interpreting 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 “en-
vironmental 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, implement-
tation, and enforcement of environmental laws, regu-
lations, 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 partici-
pation relating to human health and environ-
mental planning, regulations, and enforcement;

(B) no population of color or community of
color, indigenous community, or low-income
community shall be exposed to a dispropor-
tionate 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-
ional People of Color Environmental Leaders-

ship Summit held on October 24 through 27, 1991, in Washington, DC, are upheld.

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

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

(B) any other Federal agency that carries out a Federal program or activity that substantially affects human health or the environment, as determined by the President.

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

(7) **INDIGENOUS COMMUNITY.**—The term “indigenous community” means—

(A) a federally recognized Indian Tribe;

(B) a State-recognized Indian Tribe;

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

(D) any other community of indigenous people, including communities in other countries.

(8) **INFRASTRUCTURE.**—The term “infrastructure” 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;
(D) Pacific Islander;

(E) another nonWhite race;

(F) Hispanic;

(G) Latino; or

(H) linguistically isolated.

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

(A) generally accessible, including on the internet and in public libraries; and

(B) accessible for—

(i) individuals who are limited in English proficiency, in accordance with Executive Order 13166 (65 Fed. Reg. 50121 (August 16, 2000)); and

(ii) individuals with disabilities.

SEC. 4. INTERAGENCY FEDERAL WORKING GROUP ON ENVIRONMENTAL JUSTICE.

(a) In General.—Not later than 90 days after the date of enactment of this Act, the Administrator shall convene, as appropriate to carry out this section, the Working Group.

(b) Requirements.—

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

(A) The Secretary of Agriculture.
(B) The Secretary of Commerce.
(C) The Secretary of Defense.
(D) The Secretary of Energy.
(E) The Secretary of Health and Human Services.
(F) The Secretary of Homeland Security.
(G) The Secretary of Housing and Urban Development.
(H) The Secretary of the Interior.
(I) The Secretary of Labor.
(J) The Secretary of Transportation.
(K) The Attorney General.
(L) The Administrator.
(M) The Director of the Office of Environmental Justice.

(O) The Chairperson of the Chemical Safety Board.

(P) The Director of the Office of Management and Budget.

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

(R) The Chair of the Council on Environmental Quality.

(S) The Assistant to the President for Domestic Policy.

(T) The Director of the National Economic Council.

(U) The Chairman of the Council of Economic Advisers.

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

(2) FUNCTIONS.—The Working Group shall—

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

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

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

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

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

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

(E) identify, based in part on public rec-
ommendations contained in Federal agency
progress reports, important areas for Federal
agencies to take into consideration and address, as appropriate, in environmental justice strategies and other efforts;

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

(G) examine existing data and studies relating to environmental justice;

(H) hold public meetings and otherwise solicit public participation under paragraph (3); and

(I) develop interagency model projects relating to environmental justice that demonstrate cooperation among Federal agencies.

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

(A) hold public meetings or otherwise solicit public participation and community-based science for the purpose of fact-finding with respect to the implementation of this Act; and

(B) prepare for public review and publish a summary of any comments and recommendations provided.

(c) JUDICIAL REVIEW AND RIGHTS OF ACTION.—

Any person may commence a civil action—
(1) to seek relief from, or to compel, an agency
action under this section (including regulations pro-
mulgated pursuant to this section); or

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

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

(a) FEDERAL AGENCY RESPONSIBILITIES.—

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

(2) NONDISCRIMINATION.—Each Federal agen-
ency shall conduct any program, policy, or activity that
substantially affects human health or the environ-
ment in a manner that ensures that the program, policy, or activity does not have the effect of excluding any individual or group from participation in, denying any individual or group the benefits of, or subjecting any individual or group to discrimination under, the program, policy, or activity because of race, color, or national origin.

(3) STRATEGIES.—

(A) AGENCYWIDE STRATEGIES.—Each Federal agency shall implement and update, not less frequently than annually, an agencywide environmental justice strategy that identifies disproportionately high and adverse human health or environmental effects of the programs, policies, spending, and other activities of the Federal agency with respect to populations of color, communities of color, indigenous communities, and low-income communities, including, as appropriate for the mission of the Federal agency, with respect to the following areas:

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

(ii) Implementation of title VI of the 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-
nities of color, indigenous communities, and low-income communities;

(II) to ensure greater public participation;

(III) to provide increased access to infrastructure;

(IV) to improve research and data collection relating to the health and environment of populations of color, communities of color, indigenous communities, and low-income communities, including through the increased use of community-based science; and

(V) to identify differential patterns of use of natural resources among populations of color, communities of color, indigenous communities, and low-income communities.

(ii) Timetables.—Each strategy implemented and updated pursuant to subparagraph (A) shall include a timetable for undertaking revisions identified pursuant to clause (i).
(C) Progress reports.—Not later than 1 year after the date of enactment of this Act, and not less frequently than once every 5 years thereafter, each Federal agency shall submit to Congress and the Working Group, and shall publish, a progress report that includes, with respect to the period covered by the report—

(i) a description of the current environmental justice strategy of the Federal agency;

(ii) an evaluation of the progress made by the Federal agency at national and regional levels regarding implementation of the environmental justice strategy, including—

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

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

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

(bb) mitigating identified instances of environmental injustice;
(iii) a description of the participation by the Federal agency in interagency collaboration;

(iv) responses to recommendations submitted by members of the public to the Federal agency relating to the environmental justice strategy of the Federal agency and the implementation by the Federal agency of this Act; and

(v) any updates or revisions to the environmental justice strategy of the Federal agency, including those resulting from public comments.

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

(A) ensure that meaningful opportunities exist for the public to submit comments and recommendations relating to the environmental justice strategy, progress reports, and ongoing efforts of the Federal agency to incorporate environmental justice principles into the programs, policies, and activities of the Federal agency;

(B) hold public meetings or otherwise solicit public participation and community-based
science from populations of color, communities
of color, indigenous communities, and low-in-
come communities for fact-finding, receiving
public comments, and conducting inquiries con-
cerning environmental justice; and

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

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

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

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

(6) CODIFICATION OF GUIDANCE.—

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

(B) ENVIRONMENTAL PROTECTION AGEN-
CY.—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 RE-
SEARCH, DATA COLLECTION, AND ANALYSIS.—

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

(A) in conducting environmental or human
health research, include diverse segments of the
population in epidemiological and clinical stud-
ies, including segments at high risk from envi-
ronmental 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
identified by race, national origin, or income; and

(B) use that information to determine whether the programs, policies, and activities of the Federal agency have disproportionally high and adverse human health or environmental effects on populations of color, communities of color, indigenous communities, and low-income communities.

(3) INFORMATION RELATING TO NON-FEDERAL FACILITIES.—In connection with the implementation of Federal agency strategies under subsection (a)(3), each Federal agency, to the maximum extent practicable and permitted by applicable law, shall collect, maintain, and analyze information relating to the race, national origin, and income level, and other readily accessible and appropriate information, for fenceline communities in proximity to any facility or site expected to have a substantial environmental, human health, or economic effect on the surrounding populations, if the facility or site becomes the subject of a substantial Federal environmental administrative or judicial action.

(4) IMPACT FROM FEDERAL FACILITIES.—Each Federal agency, to the maximum extent practicable
and permitted by applicable law, shall collect, maintain, and analyze information relating to the race, national origin, and income level, and other readily accessible and appropriate information, for fenceline communities in proximity to any facility of the Federal agency that is—

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

(B) expected to have a substantial environmental, human health, or economic effect on surrounding populations.

(c) CONSUMPTION OF FISH AND WILDLIFE.—

(1) IN GENERAL.—Each Federal agency shall develop, publish (unless prohibited by law), and revise, as practicable and appropriate, guidance on actions of the Federal agency that will impact fish and wildlife consumed by populations that principally rely on fish or wildlife for subsistence.

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

(A) reflect the latest scientific information available concerning methods for evaluating the
human health risks associated with the consumption of pollutant-bearing fish or wildlife; and

(B) publish the risks of such consumption patterns.

(d) MAPPING AND SCREENING TOOL.—The Administrator shall continue to make available to the public an environmental justice mapping and screening tool (such as EJScreen or an equivalent tool) that includes, at a minimum, the following features:

(1) Nationally consistent data.

(2) Environmental data.

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

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

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

(1) to seek relief from, or to compel, an agency action under this section (including regulations promulgated pursuant to this section); or

(2) otherwise to ensure compliance with this section (including regulations promulgated pursuant to this section).
(f) Information Sharing.—In carrying out this section, each Federal agency, to the maximum extent practicable and permitted by applicable law, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and Tribal governments.

SEC. 6. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL.

(a) Establishment.—The establishment by the Administrator on September 30, 1993, by charter pursuant to the Federal Advisory Committee Act (5 U.S.C. App.) of the National Environmental Justice Advisory Council (referred to in this section as the “Advisory Council”) is enacted into law.

(b) Duties.—The Advisory Council may carry out such duties as were carried out by the Advisory Council on the day before the date of enactment of this Act, subject to modification by the Administrator, by regulation.

(c) Membership.—The membership of the Advisory Council shall—

(1) be determined and appointed in accordance with, as applicable—
(A) the charter described in subsection (a)
(or any subsequent amendment or revision of
that charter); or
(B) other appropriate bylaws or documents
of the Advisory Council, as determined by the
Administrator; and
(2) continue in effect as in existence on the day
before the date of enactment of this Act until modi-
fied in accordance with paragraph (1).
(d) DESIGNATED FEDERAL OFFICER.—The Director
of the Office of Environmental Justice of the Environ-
mental Protection Agency is designated as the Federal of-
licer required under section 10(e) of the Federal Advisory
(e) MEETINGS.—
(1) IN GENERAL.—The Advisory Council shall
meet not less frequently than 3 times each calendar
year.
(2) OPEN TO PUBLIC.—Each meeting of the
Advisory Council shall be held open to the public.
(3) DESIGNATED FEDERAL OFFICER.—The des-
ignated Federal officer described in subsection (d)
(or a designee) shall—
(A) be present at each meeting of the Ad-
visory Council;
(B) ensure that each meeting is conducted in accordance with an agenda approved in advance by the designated Federal officer;

(C) provide an opportunity for interested persons—

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

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

(D) ensure that a representative of the Working Group and a high-level representative from each regional office of the Environmental Protection Agency are invited to, and encouraged to attend, each meeting of the Advisory Council; and

(E) provide technical assistance to States seeking to establish State-level environmental justice advisory councils or implement other environmental justice policies or programs.

(f) RESPONSES FROM ADMINISTRATOR.—

(1) PUBLIC COMMENT INQUIRIES.—The Administrator shall provide a written response to each inquiry submitted to the Administrator by a member 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
Environment grant programs I and II, as in existence on January 1, 2012.

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

SEC. 8. CONSIDERATION OF CUMULATIVE IMPACTS AND PERSISTENT VIOLATIONS IN CERTAIN PERMITTING DECISIONS.

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

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

“SEC. 402. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM.

“(a) PERMITS ISSUED BY ADMINISTRATOR.—

“(1) IN GENERAL.—Except as”;

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “upon condition that such discharge will meet either (A) all” and inserting the following: “subject to the conditions that—
“(A) the discharge will achieve compliance with, as applicable—

“(i) all’’;

(ii) by striking ‘‘403 of this Act, or

(B) prior’’ and inserting the following:

‘‘403; or

“(ii) prior’’; and

(iii) by striking ‘‘this Act.’’ and insert-
ing the following: ‘‘this Act; and

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

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

“(ii) if the Administrator determines
that, due to those potential cumulative im-
parts, there does not exist a reasonable
certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, the permit or renewal includes such terms and conditions as the Administrator determines to be necessary to ensure a reasonable certainty of no harm.”; and

(B) in paragraph (2), by striking “assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.” and inserting the following: “ensure compliance with the requirements of paragraph (1), including—

“(A) conditions relating to—

“(i) data and information collection;

“(ii) reporting; and

“(iii) such other requirements as the Administrator determines to be appropriate; and

“(B) additional controls or pollution prevention requirements.”; and

(3) in subsection (b)—
(A) in each of paragraphs (1)(D), (2)(B), and (3) through (7), by striking the semicolon at the end and inserting a period;
(B) in paragraph (8), by striking “; and” at the end and inserting a period; and
(C) by adding at the end the following:
“(10) To ensure that no permit will be issued or renewed if, with respect to an application for the permit, the State determines, based on an analysis by the State of existing water quality and the potential cumulative impacts (as defined in section 501 of the Clean Air Act (42 U.S.C. 7661)) of the discharge, considered in conjunction with the designated and actual uses of the impacted navigable water, that the terms and conditions of the permit or renewal would not be sufficient to ensure a reasonable certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation.”.
(b) CLEAN AIR ACT.—
(1) DEFINITIONS.—Section 501 of the Clean Air Act (42 U.S.C. 7661) is amended—
(A) in the matter preceding paragraph (1), by striking “As used in this title—” and inserting “In this title:”;
(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (5), and (4), respectively, and moving the paragraphs so as to appear in numerical order; and

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

“(2) CUMULATIVE IMPACTS.—The term ‘cumulative impacts’ means any exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from an emission or release—

“(A) including—

“(i) environmental pollution released—

“(I)(aa) routinely;

“(bb) accidentally; or

“(cc) otherwise; and

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

“(ii) as assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area; and
“(B) evaluated taking into account sensitive populations and socioeconomic factors, where applicable.”

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

(A) in paragraph (5)—

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

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

“(F) ensure that no permit will be issued or renewed, as applicable, if—

“(i) with respect to an application for a permit or renewal of a permit for a major source, the permitting authority determines under paragraph (9)(A)(i)(II)(bb) that the terms and conditions of the permit or renewal would not be sufficient to ensure a reasonable certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, of the applicable census tracts or Tribal census tracts (as those terms are defined by the Director of the Bureau 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)”; and

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

“(9) MAJOR SOURCES.—
“(A) IN GENERAL.—With respect to any permit or renewal of a permit, as applicable, for a major source, a requirement that the permitting authority shall—

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

“(I) evaluate the potential cumulative impacts of the proposed major source, as described in the applicable cumulative impacts analysis submitted under section 503(b)(3);

“(II) if, due to those potential cumulative impacts, the permitting authority cannot determine that there exists a reasonable certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, of any census tracts or Tribal census tracts (as those terms are defined by the Director of the Bureau of the Census) located in, or immediately adjacent to, the area in which the major source is, or is proposed to be, located—
“(aa) include in the permit or renewal such terms and conditions (including additional controls or pollution prevention requirements) as the permitting authority determines to be necessary to ensure a reasonable certainty of no harm; or

“(bb) if the permitting authority determines that terms and conditions described in item (aa) would not be sufficient to ensure a reasonable certainty of no harm, deny the issuance or renewal of the permit;

“(III) determine whether the applicant is a persistent violator, based on such criteria relating to the history of compliance by an applicant with this Act as the Administrator shall establish by not later than 180 days after the date of enactment of the Environmental Justice Act of 2019;

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

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

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

“(BB) measures the applicant will carry out, or has carried out to ensure the applicant will remain in compliance with this Act, and to mitigate the environmental and health effects of noncompliance; and

“(CC) the measures the applicant has carried out in
preparing the redemption
plan to consult or negotiate
with the communities af-
fected by each persistent vio-
lation addressed in the plan;
and
“(bb) once such a redemp-
tion plan is submitted, determine
whether the plan is adequate to
ensuring that the applicant—
“(AA) will achieve com-
pliance with this Act expedi-
tiously;
“(BB) will remain in
compliance with this Act;
“(CC) will mitigate the
environmental and health ef-
facts of noncompliance; and
“(DD) has solicited and
responded to community
input regarding the redemp-
tion plan; and
“(V) deny the issuance or re-
newal of the permit if the permitting
authority determines that—
“(aa) the redemption plan submitted under subclause (IV)(aa) is inadequate; or

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

“(BB) no indication exists of extremely exigent circumstances excusing the persistent violations; and

“(ii) in the case of such a permit with a term of 3 years or longer, require in accordance with subparagraph (B).”.

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

“(3) MAJOR SOURCE ANALYSES.—The regulations required by section 502(b) shall include a requirement that an applicant for a permit or renewal of a permit for a major source shall submit, together with the compliance plan required under this subsection, a cumulative impacts analysis for each census tract or Tribal census tract (as those terms are defined by the Director of the Bureau of the Cen-
sus) located in, or immediately adjacent to, the area in which the major source is, or is proposed to be, located that analyzes—

“(A) community demographics and locations of community exposure points, such as schools, day care centers, nursing homes, hospitals, health clinics, places of religious worship, parks, playgrounds, and community centers;

“(B) air quality and the potential effect on that air quality of emissions of air pollutants (including pollutants listed under section 108 or 112) from the proposed major source, including in combination with existing sources of pollutants;

“(C) the potential effects on soil quality and water quality of emissions of lead and other air pollutants that could contaminate soil or water from the proposed major source, including in combination with existing sources of pollutants; and

“(D) public health and any potential effects on public health of the proposed major source.”.
SEC. 9. IMPLIED RIGHTS OF ACTION AND COMMON LAW CLAIMS.

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

“(i) Effect on implied rights of action and common law claims.—

“(1) Definition of covered act.—In this subsection:

“(A) In general.—The term ‘covered Act’ means—

“(i) this Act;

“(ii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

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

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

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

“(vi) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
“(vii) the Clean Air Act (42 U.S.C. 7401 et seq.);"

“(viii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and

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

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

“(2) EFFECT.—Nothing in a covered Act precludes the right to bring an action—

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

“(B) that is implied under—

“(i) a covered Act; or

“(ii) common law.

“(3) APPLICATION.—Nothing in this section precludes the right to bring an action under any provision of law that is not a covered Act.”.
SEC. 10. PRIVATE RIGHTS OF ACTION FOR DISCRIMINATORY PRACTICES.

(a) Right of Action.—Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) is amended—

(1) by inserting “(a)” before “Each Federal department and agency which is empowered”; and

(2) by adding at the end the following:

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

(b) Effective Date.—

(1) In general.—This section, including the amendments made by this section, takes effect on the date of enactment of this Act.

(2) Application.—This section, including the amendments made by this section, applies to all actions or proceedings pending on or after the date of enactment of this Act.

SEC. 11. SEVERABILITY.

If any provision of this Act, or the application of such a provision to any person or circumstance, is determined to be invalid, the remainder of this Act and the application
of the provision to other persons or circumstances shall not be affected.