ENVIRONMENTAL JUSTICE AND THE CONVERGENCE OF SOCIAL AWARENESS AND CLIMATE CHANGE

IMLA ENVIRONMENT SECTION MEETING

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ENVIRONMENTAL JUSTICE

Environmental justice (EJ) 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.” EPA definition.

EXEC. ORDER 13985

- "Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face."

EXAMPLES OF EJ ISSUES

- Disproportionate siting of toxic and hazardous waste sites
- Poor air quality due to proximity to fossil fuel infrastructure and traffic
- Elevated lead and contaminants in drinking water (lead, PFAS)

FOR CITIES – FEDERAL ENFORCEMENT

- Increased facility inspections
- Enforce noncompliance with environmental laws in overburdened communities (prevent pollution, mitigate past impacts, seek penalties for violations)
- Increased cleanup actions and enforcement (CERCLA, RCRA)
- More aggressively prosecute environmental crimes

FOR CITIES – FEDERAL INVESTMENTS AND GRANTS

- Justice40 Initiative: federal agencies will deliver at least 40% of the overall benefits from federal investments in climate and clean energy to disadvantaged communities.
- Exs. of 21 pilot projects:
  - DHS flood mitigation and building resiliency
  - DOE solar energy
  - EPA drinking water state revolving fund and reducing lead in drinking water
  - HUD lead reduction in homes
  - USDA energy for rural areas

FOR CITIES – LAND USE AND PLANNING

- California Senate Bill 1000
- New York Climate Leadership and Community Protection Act (CLCPA)
- New Jersey (S232)
- Washington Healthy Environment for All (HEAL) Act

CALIFORNIA SB 1000

Requires cities and counties to add an environmental justice element to their general plans that "identif[ies] objectives and policies to reduce the . . . health risks in disadvantaged communities, . . . promote[s] civil engagement in the public decision-making process, and . . . prioritize[s] improvements and programs that address the needs of disadvantaged communities."

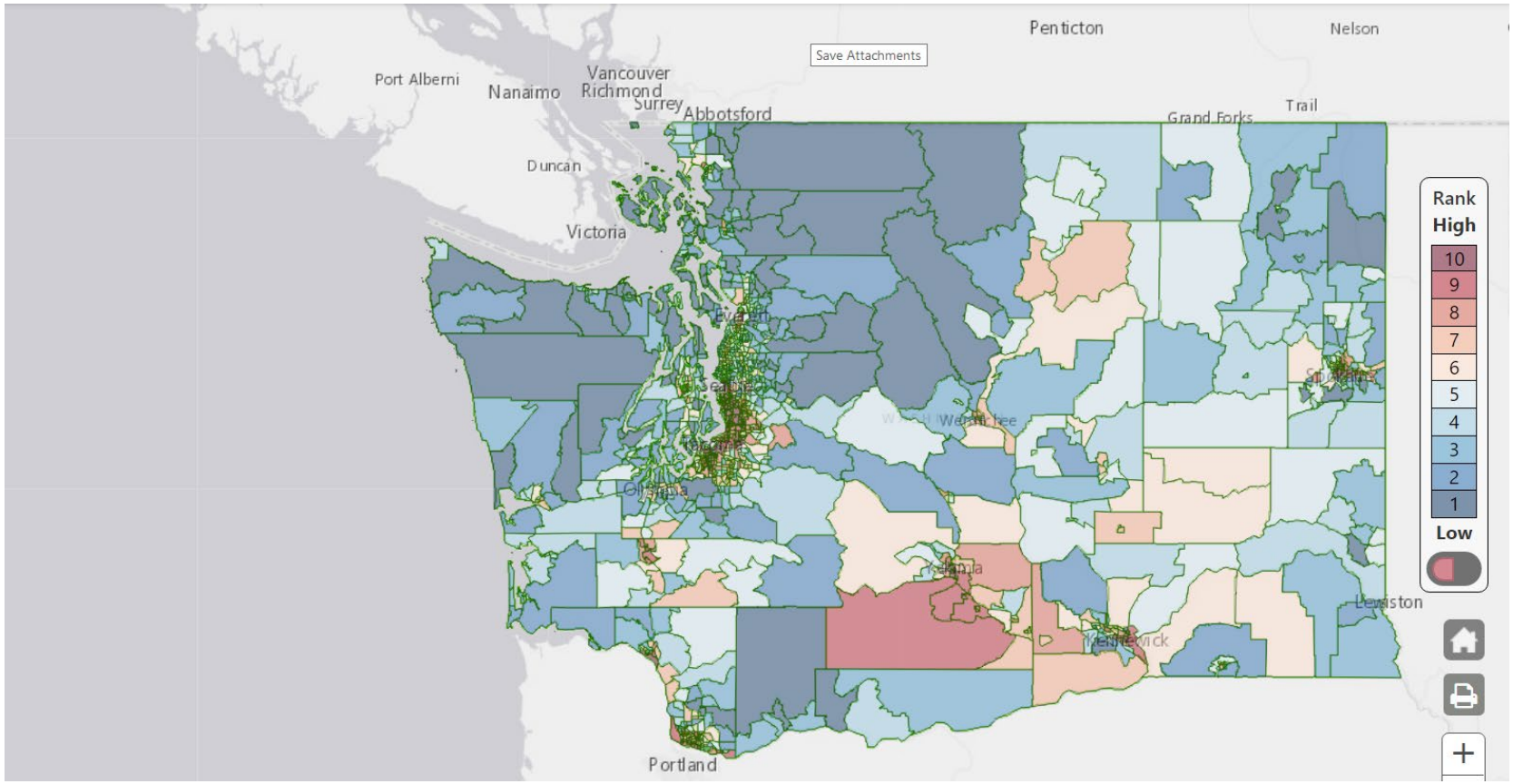
NEW YORK CLCPA

- § 75-0111.1.b – requires a working group "to establish criteria to identify disadvantaged communities for the purposes of co-pollutant reductions, greenhouse gas emissions reductions, regulatory impact statements, and the allocation of investments related to this article."

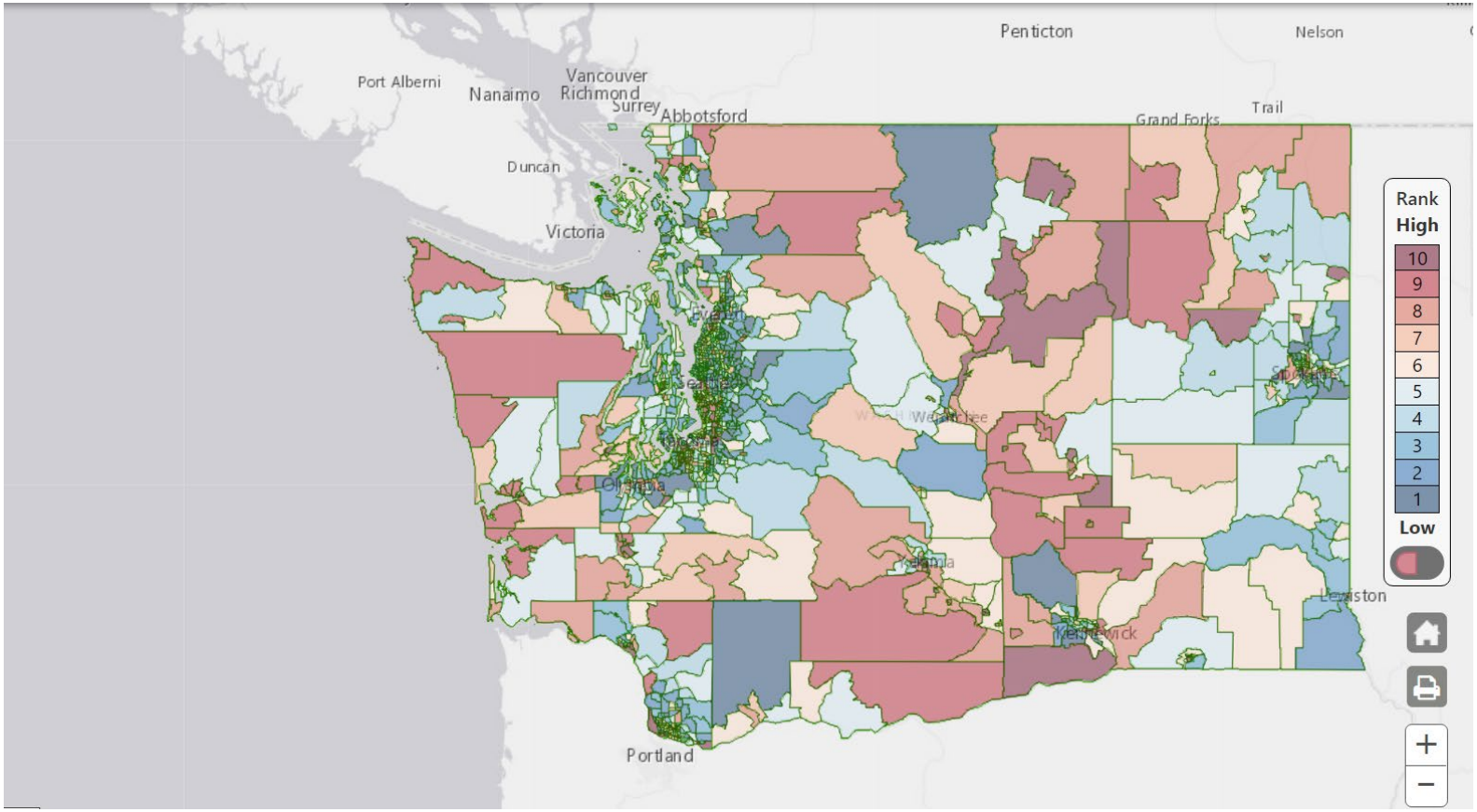
WASHINGTON HEAL

- § 12 – EJ implementation plan in agencies' strategic plans
- § 13 – EJ engagement and community participation
- § 14 – EJ assessment
- § 15 – EJ obligations in agencies' budgets and funding
- § 19 – health disparities map

WA HEALTH DISPARITIES MAP



WA HEALTH DISPARITIES MAP



LEAD AND COPPER RULE



Children

Even low levels of lead in the blood of children can result in:

- Behavior and learning problems
- Lower IQ and hyperactivity
- Slowed growth
- Hearing problems
- Anemia

In rare cases, ingestion of lead can cause seizures, coma and even death.

Pregnant Women

Lead can accumulate in our bodies over time, where it is stored in bones along with calcium. During pregnancy, lead is released from bones as maternal calcium and is used to help form the bones of the fetus. This is particularly true if a woman does not have enough dietary calcium. Lead can also cross the placental barrier exposing the fetus to lead. This can result in serious effects to the mother and her developing fetus, including:

- Reduced growth of the fetus
- Premature birth

Source: EPA

LEAD AND COPPER RULE



LEAD AND COPPER RULE

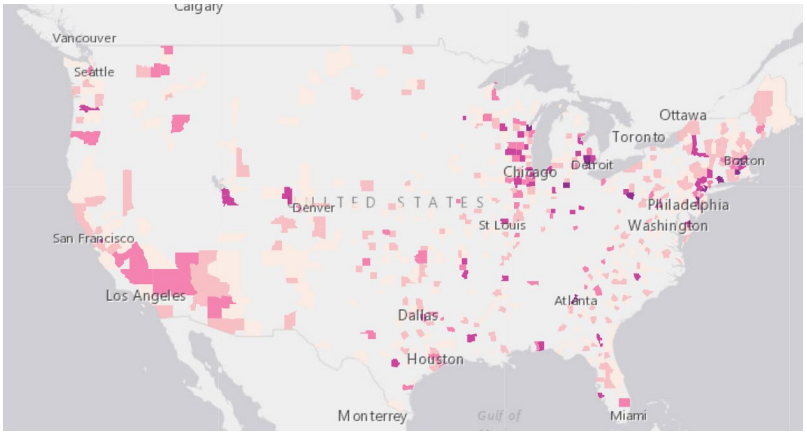
Category	Old Requirement	New Requirement
Action Level (AL)	90th percentile (P90) of 15 µg/L lead and 1.3 mg/L copper	• New responses required for same action levels • New trigger level of 10 µg/L < P90 ≤ 15 µg/L (TL)
Monitoring	• 50% samples from LSL • Collect 1st L after 6 hours stagnant	• 100% samples from LSLs if possible • Collect 5th L @ LSL
Corrosion Control Treatment (CCT)	CCT required for systems serving >50k or exceed AL	• All systems exceeding AL must complete or re-optimize CCT • Systems exceeding only TL must conduct CCT study or re-optimize CCT (unless <10k flexibility)

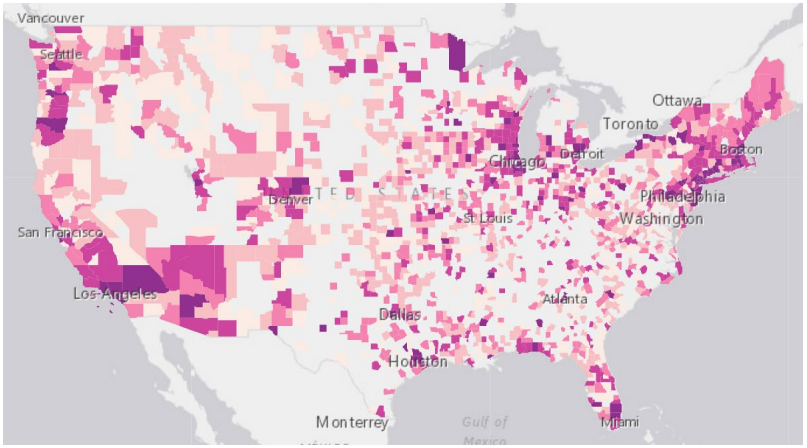
LEAD AND COPPER RULE

Category	Old Requirement	New Requirement
LSL Inventory	Inventory at initial sampling only	Complete inventory or show no LSLs within 3 years and update annually or triennially
LSL Replacement	• No replacement plan required • If P90 > AL must annually replace 7% of LSLs (partial replacement ok)	• If P90 > AL, fully replace 3% LSL / year in 2-year rolling average • If P90 > TL, begin replacing with goal set by state • Only full replacement counts • Mandatory replacement of public line if private line is replaced • Filter requirement after LSL replacement

LEAD AND COPPER RULE

EJ Concern: Replacement Mandate and Rate



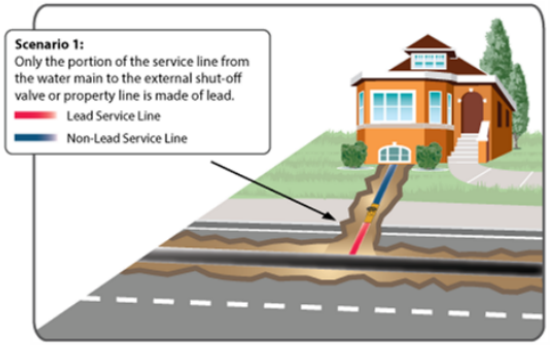


	Action Level Exceedance	Trigger Level Exceedance
Old Rule	7% replacement rate Partial replacements count	N/A
New Rule	3% replacement rate Only full replacements count	Rate TBD by State

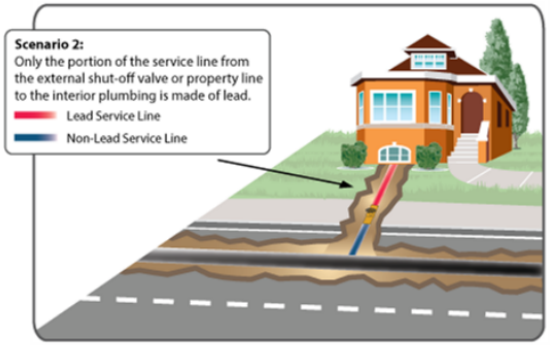
Image Source: NRDC (images do not reflect actual AL / TL levels)

LEAD AND COPPER RULE

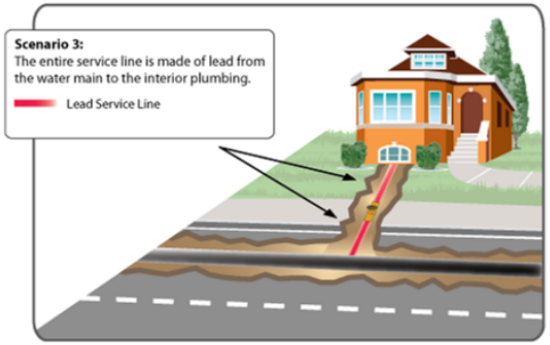
EJ Concern: Partial Replacement



Scenario 1: Only the portion of the service line from the water main to the external shut-off valve or property line is made of lead, and the portion from the external shut-off valve or property line to the home is made of a different material, such as copper or galvanized iron pipe.



Scenario 2: The city may have replaced the portion of the lead service line from the water main to the property line or external shut-off valve to the property with another pipe material, and only the portion of the service line from the property line or external shut-off valve to the home is now lead.



Scenario 3: The entire service line from the water main to the home may be made of lead.

Image Source: EPA

LEAD AND COPPER RULE

EJ Concern: Replacement Cost

EPA estimates an average cost of $4,700, ranging from $1,200 to $12,300 per line replaced. (See Chapter 5 of the LCRR Economic Analysis, docket number EPA-HQ-OW-2017-0300.)

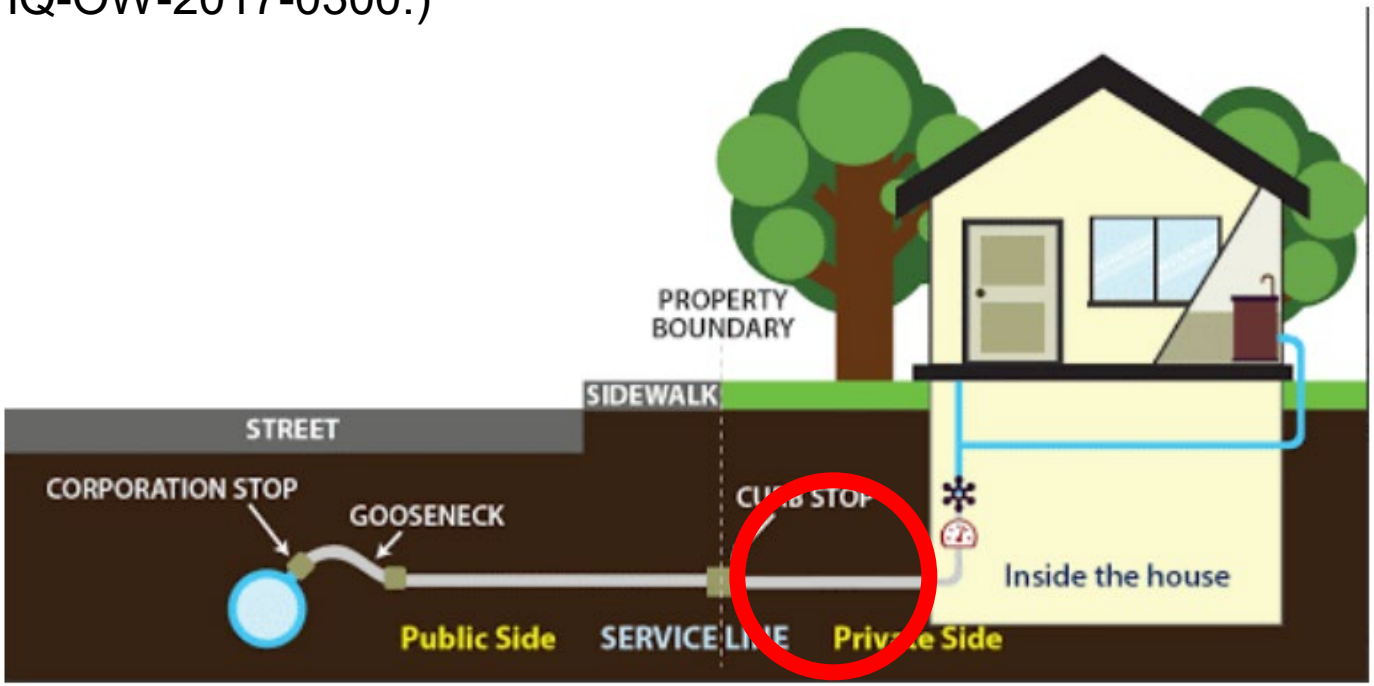
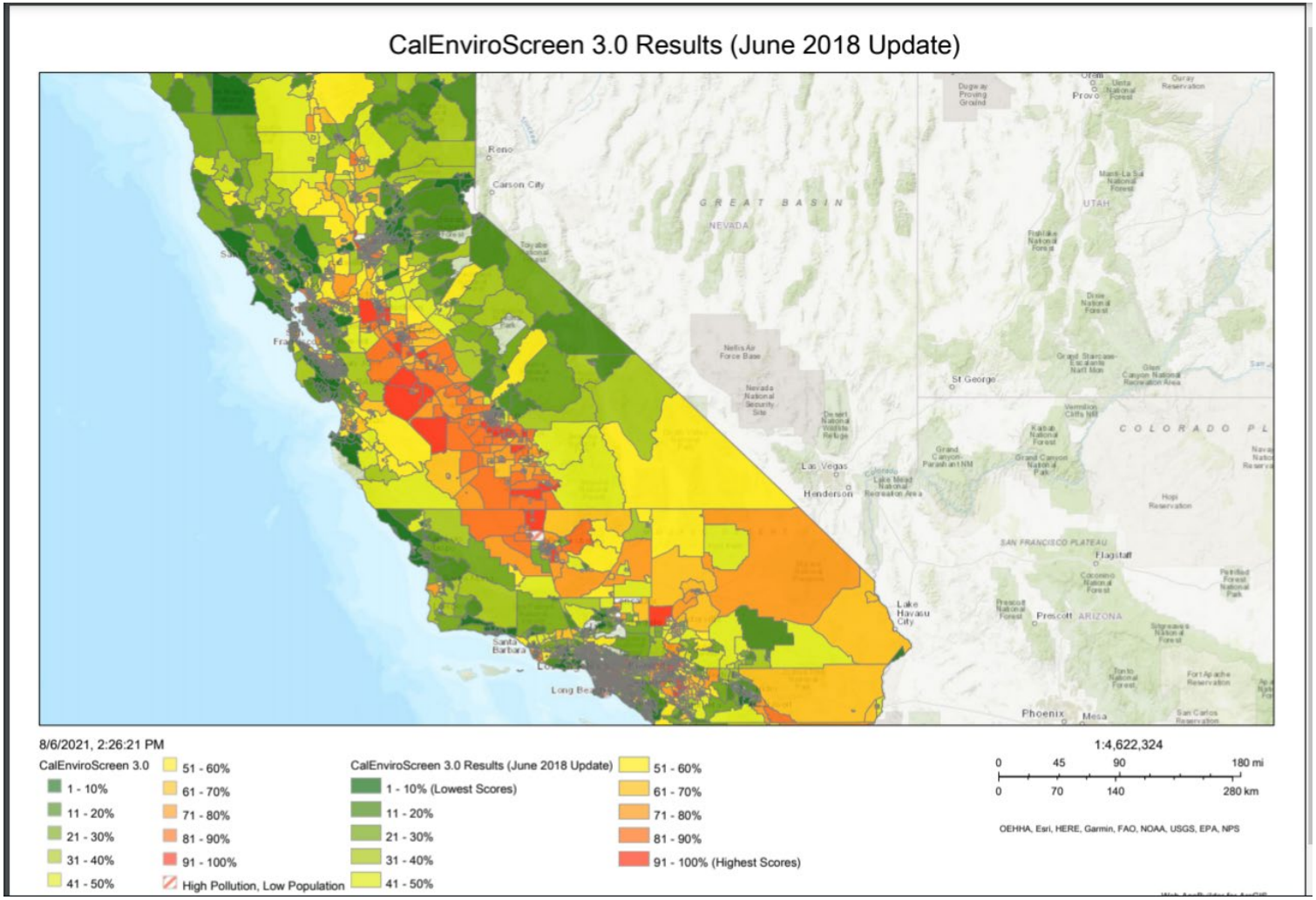


Image Source: City of Grand Rapids

IMPLEMENTING EJ AT THE CITY LEVEL

- CA Office of Planning and Research (OPR) Guidelines
- CA Atty General's SB 1000 webpage
- CA Environmental Justice Alliance (CEJA) SB 1000 Implementation Toolkit
- Friends of Buckingham, 947 F.3d 68 (4th Cir. 2020)

CAL. AG'S SB 1000 WEBPAGE



CEJA SB 1000 TOOLKIT













BUCKINGHAM – HOLDING

- Board failed to find whether local community was an EJ community
- Board relied on compliance with air quality standards for the county
- Consequently, "the Board failed to grapple with the likelihood that those living closest to the Compressor Station . . . will be affected more than those loving in other parts of the same county." Id. at 91-92.

BUCKINGHAM – ROADMAP

- Is the affected community an EJ community
- What evidence exists of the elevated health risks suffered by the affected minority group
- Are the elevated health risks connected to the contaminants released by the business operations
- Do the regulatory standards or health risk assessments consider the EJ community and its elevated health risks