



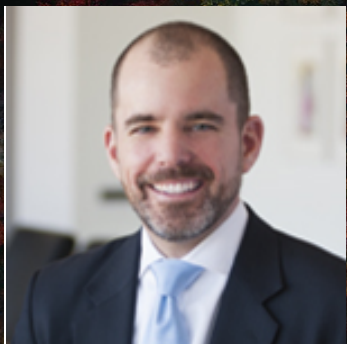
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2023
EARTH DAY
WEBINAR SERIES

Environmental Justice and the E in ESG

April 20, 2023

Presenters



Duke K. McCall III
Partner | Washington, DC



Rick R. Rothman
Partner | Los Angeles



Gina Waterfield
Director | Berkeley Research Group
Washington, DC

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Recent Earth Day Webinars

Recordings and slides available:

- **Evolving Environmental Laws: Endangered Species Act and WOTUS Under the Clean Water Act**

April 17, 2023

– Presenters: Doug Hastings, David Brown

- **Regulation and Litigation on the (PFAS)t Track in 2023**

April 18, 2023

– Presenters: Stephanie Feingold, Jeremy Esterkin, Kate Deal, Drew Jordan

- **EPA's Chemicals Regulatory Agenda: Testing, Reporting, Rulemaking, and Litigation**

April 19, 2023

– Presenters: John McGahren, Debra Carfora



Equity, Environmental Justice, and Civil Rights

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Background

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Environmental justice 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.”

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Executive Order 12898: February 16, 1994



Federal Register

Vol. 59, No. 32

Wednesday, February 16, 1994

Presidential Documents

Title 3—

Executive Order 12898 of February 11, 1994

The President

Federal Actions To Address Environmental Justice in
Minority Populations and Low Income Populations

Federal Register / Vol. 59, No. 32 / Wednesday, February 16, 1994 / Presidential Documents

of the United States, its agencies, its officers, or any other person with
this order.

William Clinton

THE WHITE HOUSE,
February 11, 1994.



Biden-Harris Administration

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Environmental Justice Campaign Promises



Executive Order 13985: January 20, 2021

- Defines “equity” to “mean[] the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment”
- Requires an equity assessment (or audit) in federal agencies
- Directs the federal government to “allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities”

Executive Order 14008: January 27, 2021

- Identifies environmental and economic justice as key considerations in governance
- Establishes Environmental Justice Interagency Council
- Establishes Environmental Justice Advisory Council
- Establishes Justice40 Initiative

Environmental Justice Funding

- American Rescue Plan
- Bipartisan Infrastructure Law
- Inflation Reduction Act



Environmental Justice Implementation

- Environmental Protection Agency (EPA) Legal Tools to Advance Environmental Justice (May 2022)
- DOJ Office of Environmental Justice (May 2022)
- DOJ Environmental Justice Enforcement Strategy (May 2022)
- EPA Office of Environmental Justice and External Civil Rights (August 2022)
- Environmental Justice and Civil Rights in Permitting FAQ (August 2022)
- EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum (January 2023)





EJScreen

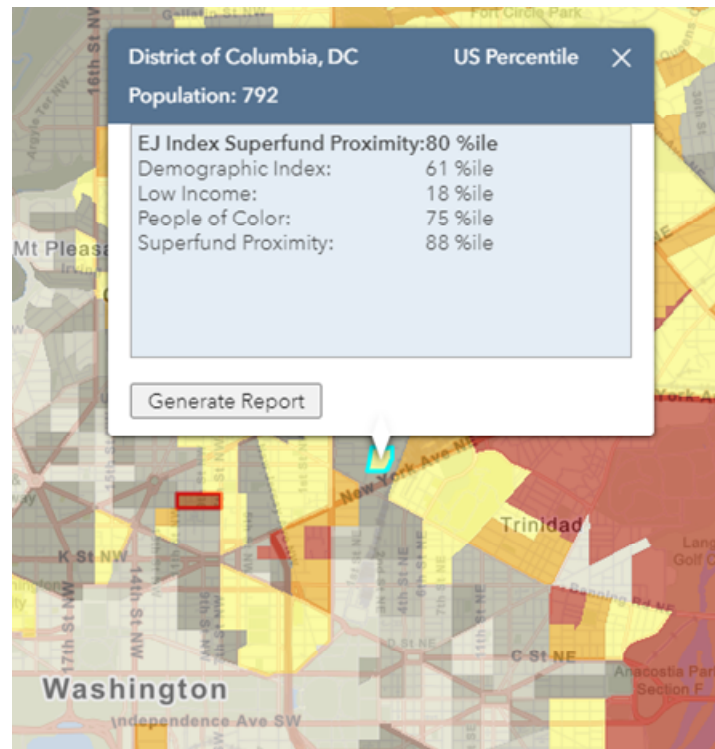
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EPA's Environmental Justice Screening Tool: EJScreen

- “[P]rovides EPA with a nationally consistent dataset and approach for combining environmental and demographic socioeconomic indicators”
- Examples of how the Agency uses EJScreen include:
 - Informing outreach and engagement practices
 - As an initial screen for voluntary programs, enhanced outreach in permitting, and prioritizing enforcement work
 - Developing retrospective reports of EPA work
- EJScreen is not used to identify or label an area as an “EJ community,” to quantify specific risk values, or as the sole basis for EPA decision-making or making a determination regarding the existence or absence of EJ concerns

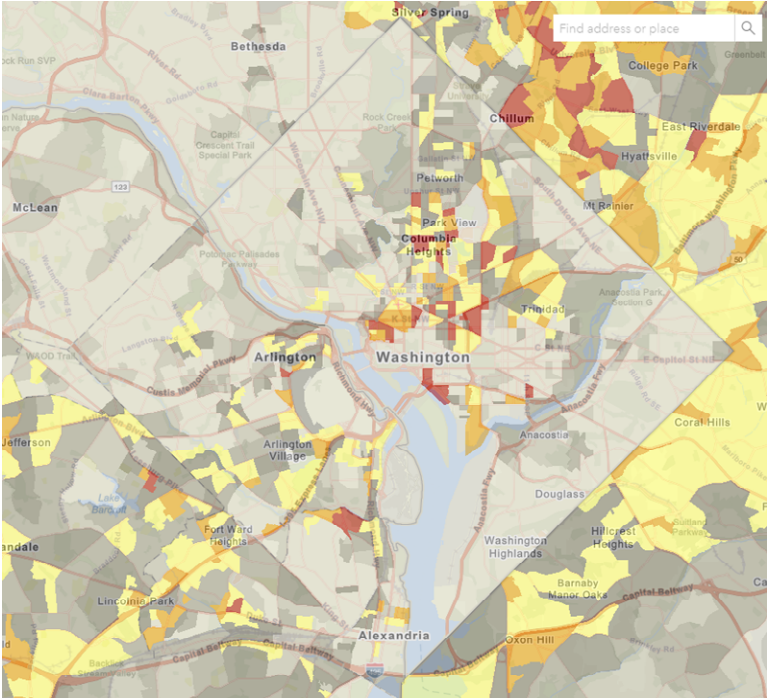
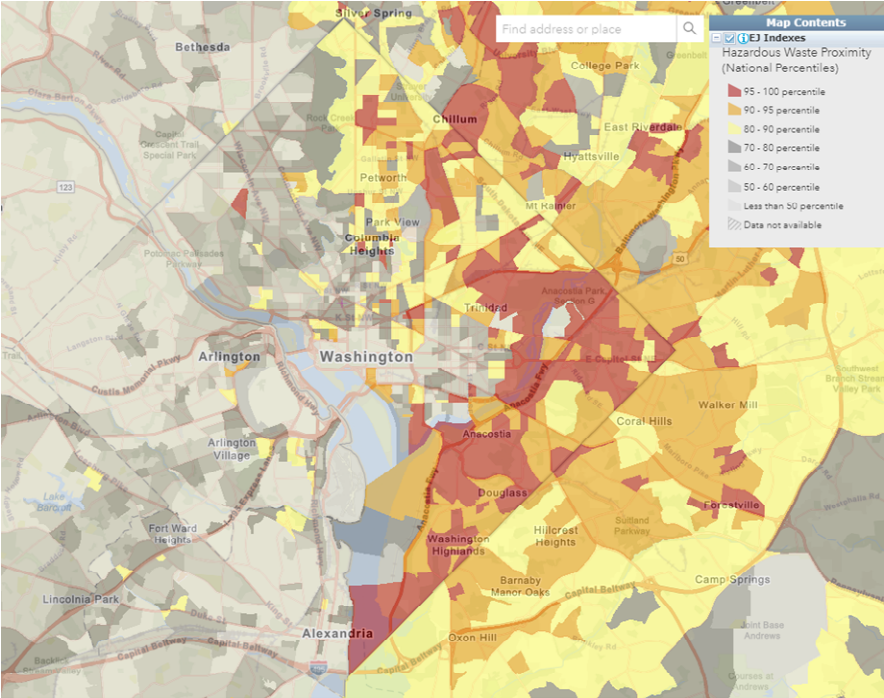
How Does EJScreen Work?

- **Combines environmental monitoring data with census demographic information at a fine geographical scale to produce EJ Indexes:**
 - PM 2.5
 - Ozone
 - Diesel PM
 - Air Toxics Cancer Risk
 - Air Toxics Respiratory Hazard Index
 - Traffic Proximity
 - Lead Paint
 - RMP Facility Proximity
 - Hazardous Waste Proximity
 - Superfund Proximity
 - Underground Storage Tanks
 - Wastewater Discharge

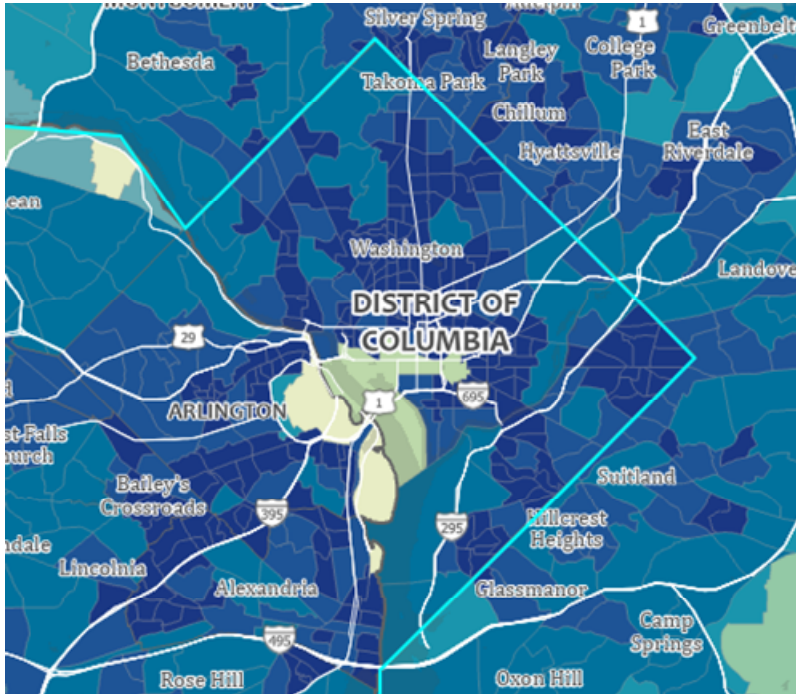


What Other Data and Analysis Should Be Considered?

The Relevant Geographic Area for Comparison



The Number of People Impacted



EJScreen's indexes are based on population *percentages*, so do not account for population density

- For example, a hazardous waste facility may be better sited in a rural area with 20% of the population of 1,000 people in vulnerable demographic groups (200 people) than in an urban area with 15% of the population of 10,000 people in vulnerable demographic groups (1,500 people)

Environmental and Community Resources

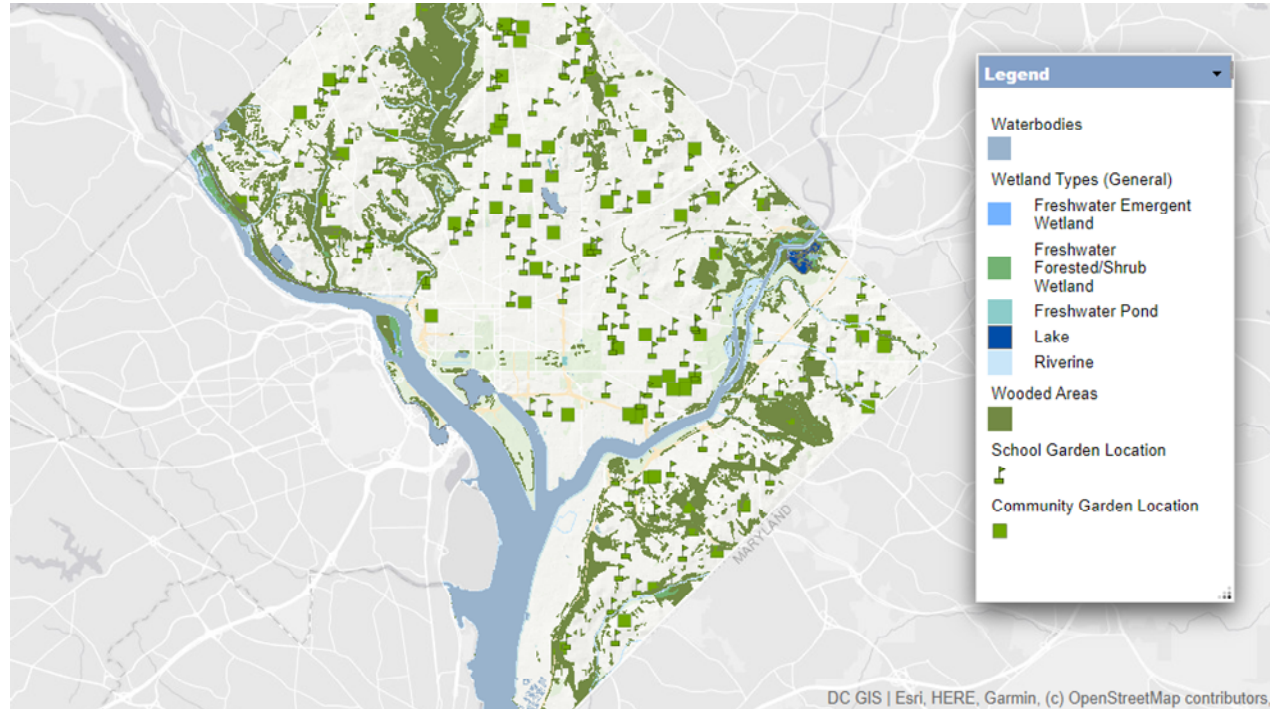
EJScreen does not account for proximity to important resources:

Environmental resources:

- Recreational areas
- Surface-water bodies
- Wildlife habitats

Community resources:

- Schools and playgrounds
- Hospitals
- Housing developments



Economic Impacts

- **Construction and operation of manufacturing and industrial facilities, as well as environmental remediation activities, have impacts on the local economy**
 - Employment
 - Revenues
 - Indirect and induced impacts
- **Input-output modeling can be used to predict these economic impacts, and be coupled with environmental information**
 - IMPLAN
 - REMI
 - RIMS II (BEA)
 - EPA's USEEIO

Conclusion

- EJScreen can provide a useful first cut to flag areas of potential concern from an environmental justice perspective
- Additional data and analysis are needed to make sure the tool is used appropriately and factors that are relevant to communities and economic welfare are accounted for



Enforcement, Cleanups, and Environmental Justice

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EPA Enforcement

- Administrator Regan – Direction from the top:
 - April 7, 2021 Memo directing EPA staff to “infuse equity and environmental justice principles and priorities into all EPA practices, policies, and programs”
 - Administrator Regan: “integrating environmental justice and equity into the very DNA of EPA.”
- Stated goals:
 - Strengthen enforcement of violations in areas that have been encumbered by pollution
 - More frequent underserved community engagement in enforcement and compliance



Administrator Regan—Journey to Justice



- Nov. 2021 tour to spotlight EJ concerns
 - Visited Mississippi, Louisiana, and Texas
 - Promoted as part of a “renewed” focus on EJ
- Actions as a result:
 - Directed Office of Enforcement and Compliance Assurance (OECA) to aggressively use its authority to conduct unannounced inspections at suspected non-compliant facilities
 - Launched a pollution monitoring project to provide compliance and monitoring in the South
 - Issued numerous NOVs to facilities with EJ concerns
 - Looking to require installation of fenceline monitors in certain regulated facilities with EJ concerns
 - Expedited reviews of certain former landfill sites

EJ on EPA's National Enforcement and Compliance Initiatives (NECI) for FY 2024-2027

- In Jan. 2023, EPA proposed to add environmental justice to its NECI for 2024-27
 - Adding EJ to each of the national initiatives
- In Practice:
 - EPA seeking to institutionalize EJ goals
 - Promoting EJ “not specific to any one program or statute” – “core principle” of all enforcement work
 - Focus on “overburdened areas, such as fenceline communities”
 - Reducing noncompliance (esp. re National Pollutant Discharge Elimination Systems (NPDES)) at facilities in communities with EJ concerns



DOJ Environmental Justice Enforcement Strategy



- May 2022 announcement from Department of Justice (DOJ) and EPA
 - Office of Environmental Justice established within the DOJ
- Series of principles for enforcement re EJ:
 - Prioritize cases that address public health and environmental harms to overburdened and underserved communities
 - Make strategic use of all available legal tools to address EJ concerns
 - Ensure meaningful engagement with impacted communities
 - Promote transparency of EJ enforcement efforts and their results

EJ and Superfund

- Biden's budgets have set aside billions for Superfund sites to specifically advance EJ efforts
- Focus on incorporation of EJ into the site-assessment process
- Community-led cleanup projects
- Prioritize early action for cleanups with potential impact on overburdened communities
- EPA to look for opportunities to issue orders for interim relief



Potential Impact on Cleanups

- Expediting Remedial Design/Remedial Action (RD/RA) negotiations
 - Looking to complete some within one year
 - Potentially bifurcated RD and RA
 - Consider EJ concerns in Engineering Evaluation/Cost Analysis (EE/CA) and Remedial Investigation/Feasibility Study (RI/FS) processes
- Timing: Watch for early involvement of EPA Office of Regional Counsel when requesting extensions of deadlines or letting deadlines pass
- Expediate disputes at National Priorities List (NPL) sites near or in communities with EJ concerns
- Conduct additional compliance reviews
- Increased oversight of cleanups
- EJ considerations in RODs

Potential Impact on Existing Sites

- Current Superfund sites near underserved communities
 - Some estimate as high as 70% are within a mile of public housing
 - Potential for additional scrutiny (i.e., five-year reviews)
- Intersection of climate change and Superfund sites
 - Reports show that many sites, including those near underserved communities, are threatened by natural disasters
- Even risk for removed sites or sites pending removal from NPL
 - Claims that prior administration's removal of sites has neglected communities of color
 - Environmental justice a factor in future removal from NPL?

Potential Impact on Existing Sites



- Reviews generally take place five years following the start of a CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) response action, and are repeated every five years as long as future use remains restricted
- Given new EJ priorities, EPA could conclude, through the review process, that a remedy is no longer protective of human health and the environment

Biography



Duke K. McCall, III

Washington, DC

+1.202.373.6607

duke.mccall@morganlewis.com

Duke's practice focuses on environmental law and complex litigation. He represents clients in contribution actions, enforcement proceedings, citizen suits, toxic tort litigation, and regulatory matters, including actions brought under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and analogous state laws.

Additionally, Duke assists clients with environmental due diligence, developing environmental compliance programs, conducting internal investigations relating to environmental matters, and pursuing insurance coverage for environmental liabilities. He also advises clients on the requirements of numerous environmental programs established under federal and state environmental laws and regulations, international environmental treaties, and foreign environmental laws and regulations.

Biography



Rick R. Rothman

Los Angeles

+1.213.680.6590

rick.rothman@morganlewis.com

Rick focuses on environmental and energy counseling and litigation. Rick's practice encompasses a broad range of environmental and energy laws, including the laws and regulations concerning air quality (both stationary and mobile sources), water quality, power plant siting, hazardous substances, impacted properties, energy efficiency, climate change, and Proposition 65.

Rick has experience in counseling clients in a number of different contexts, including threatened enforcement actions, variance requests, permitting and appeals, and due diligence reviews, and meeting state and federal reporting requirements and warning requirements.

Biography



Gina Waterfield

Berkeley Research Group
Washington, DC

+1.771.208.5625

GWaterfield@thinkbrg.com

Dr. Gina Waterfield is an economist and director in BRG's Washington, DC, office. She specializes in the areas of environment and natural resources, agriculture, and consumer behavior. She has assisted private and government clients in litigation, regulatory, and decision-making contexts.

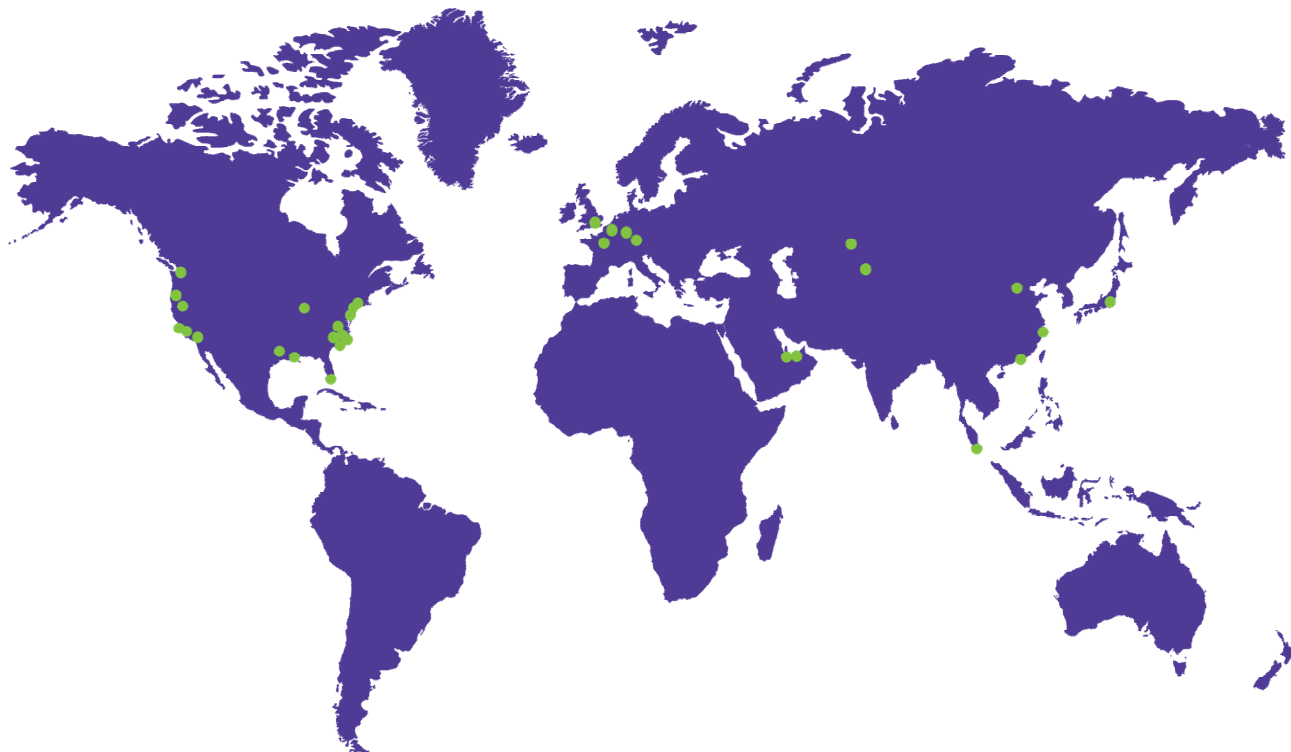
Dr. Waterfield has consulted on matters including natural resource damages valuations, policy impact assessments, regulatory compliance issues, water rights disputes, product liability cases, and estimation of environmental liabilities in tax-related proceedings. She has conducted econometric analyses to estimate the health effects of air and water contamination, household and recreational welfare losses due to natural resource injury, and impacts of policy changes on agricultural production, among other topics.

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