

# Environmental Justice

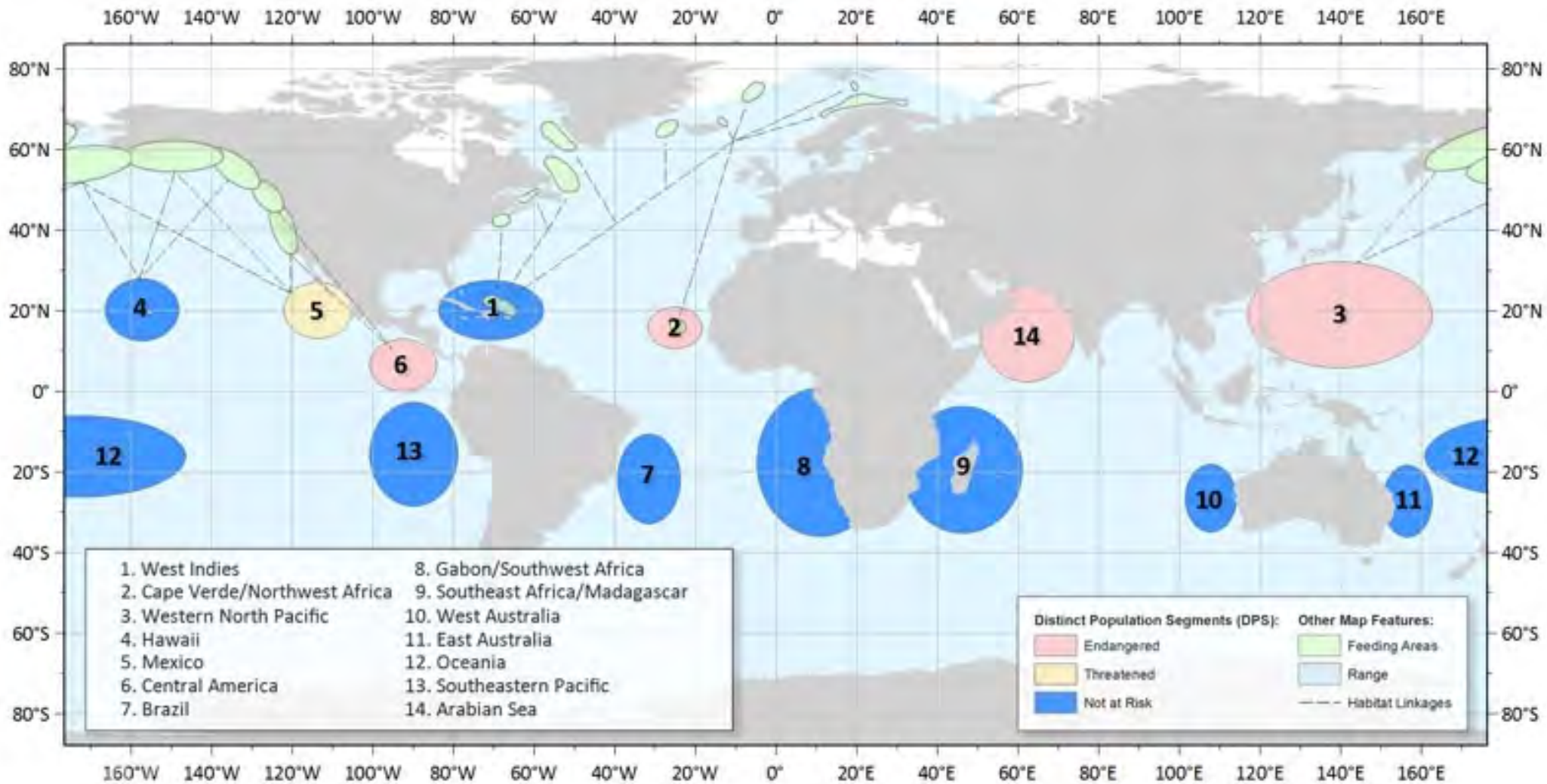
Sept. 7

The week's good &  
bad news



# Humpback whales

9 of 14 populations no longer listed under ESA  
after 46 years of ESA protection (n=11,000)





# Panda bears

IUCN downgrades from endangered to vulnerable  
1,850 in wild in China (up from 1,600 in 2003)

# Bornean orangutan: now critically endangered



Western lowland gorilla: now critically endangered



# What is EJ?

EPA defines environmental justice as “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 has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

# environmental justice

minority & poverty

minority or poverty

Title VI Civil Rights Act

prohibits intentional  
discrimination (§601), or  
discriminatory effect (§602)

But no private right of action

still, federal agencies have  
regulations (e.g. 40 CFR pt 7)

E.O. 12898



# The EJ movement

It grew out of, in part, the 1987 study conducted by the United Church of Christ's Commission for Racial Justice... finding that race, even more than income, was the most significant variable in predicting residential proximity to hazardous waste facilities.

Delegates to the First People of Color Environmental Leadership Summit gathered in Washington, D.C. in 1991 and adopted the Principles of Environmental Justice.

Principles speak of “environmentally safe neighborhoods”

# The EJ Movement

Health has been the primary theme

Goal is more equitable distribution of environmental threats and privileges

EJ communities across the U.S. – including Texas and LA.

Corpus Christi, Texas

Port Arthur, Texas

Louisiana Bucket Brigade



The Oak Park neighborhood –  
Adjacent to CITGO's refinery in Corpus Christi  
1995



Buyout: The Oak Park neighborhood was converted to green space and residents relocated

2002

# Port Arthur



UKG



Joplin



Bridge City

Central Gardens

Port Neches

Nederland

Viterbo

Groves

Port Arthur

West Port Arthur

Goat Island

Shell Island

Humble Island Sydnese Island

Stewts Island  
Dooms Island

Pleasure Island

Marceaux Island

Sabine Lake

Double Island

Dreary Island

Texaco Island

5.01 mi

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Port Arthur

West Port Arthur

215

87

82

69

96

Gulfway Dr

DeQueen Blvd

16th St

Thomas Blvd

7th St

Procter St

Houston Ave

W Levee Rd

W Thomas Blvd

Martin Luther King Jr Dr

F B Ellison Pkwy

7779 ft

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# Port Arthur – Hilton Kelley and CIDA

Kelley's organization: Community In Power and Development Association (CIDA)

Represented "fenceline" communities

They used air samples and other strategies to document excess pollution from the refineries and then opposed permit applications for major expansions.

The result was a Community Enhancement Agreement with Motiva that provided for community financial support and other specific air pollution control and abatement measures

# Port Arthur – agreement with Motiva

Initial funding of \$2 million was provided by Motiva with another \$1.5 million pledged to match grants from other sources.

The goal is to provide seed money to support a long-term effort to revitalize West Port Arthur.

Among the provisions are -

- the installation of pollution controls for cancer causing benzene air emissions from its waste water system not required by law;

- the funding of a new ambient air quality monitor to measure air pollutants such as hydrogen sulfide that are not being measured at this time in Port Arthur;

- funding for the community for better access to community health facilities; and

- an annual environmental report to the community for a better exchange of information.

# Key EJ issues for environmental law

How will environmental justice concerns affect:

Development of rules and public notice procedures?

Permits for facilities?

The decision to pursue enforcement, both civil and criminal?

Sentencing and punishment?

# Federal framework for EJ

President Clinton's Executive Order (EO) 12898, Signed in 1994

Directed all federal agencies to list programs and policies that might be revised in light of environmental justice considerations

Created an Interagency Working Group on EJ

Less attention to EJ during the George W. Bush administration

Obama administration has refocused attention

Reconvened the Interagency Working Group

Hosted multiple forums around the country

EJ 2014 and EL 2016-2020 Plans

# National Environmental Justice Advisory Committee (NEJAC)

NEJAC is a federal advisory committee formed in 1992 to provide recommendations to EPA on EJ matters

Composed of 26 members from among Academia, Community Groups, Business Community, Non-Government Organizations, State and Local Governments, and Tribal Governments

EPA often poses direct questions to the NEJAC

NEJAC produces thorough, well-cited guidance documents

# Plan EJ 2014

Goal is strengthen EJ focus in five areas

rulemaking,

permitting,

compliance,

community-based action, and

administrative-wide action.

Goal is to:

Protect the environment and health in overburdened communities;

Empower communities to take action to improve their health and environment; and,

Establish partnerships with local, state, tribal and federal governments and organizations to achieve healthy and sustainable communities.

# EJ Guidance during regulatory actions

EPA issued final guidance in 2015

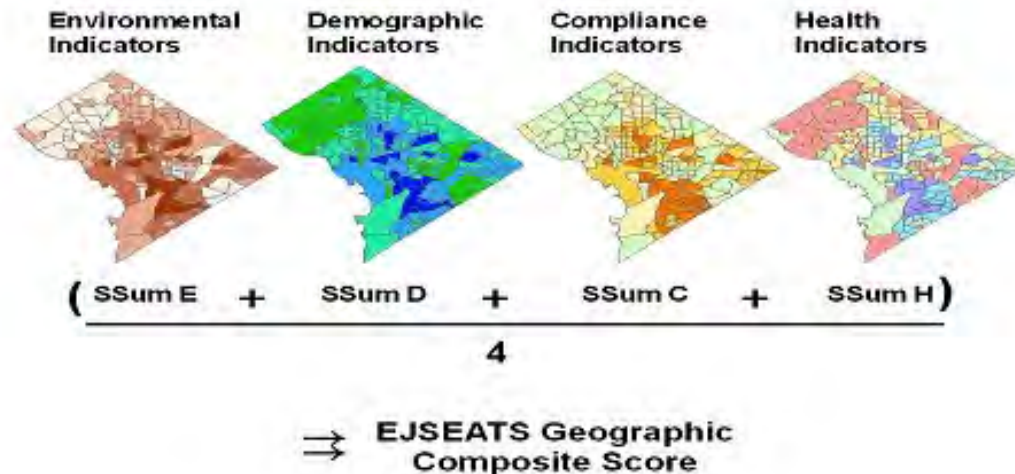
“Fair Treatment” means that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental and commercial operations or programs and policies.

“Meaningful Involvement” means that: (1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory Agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.

# EJ Tools

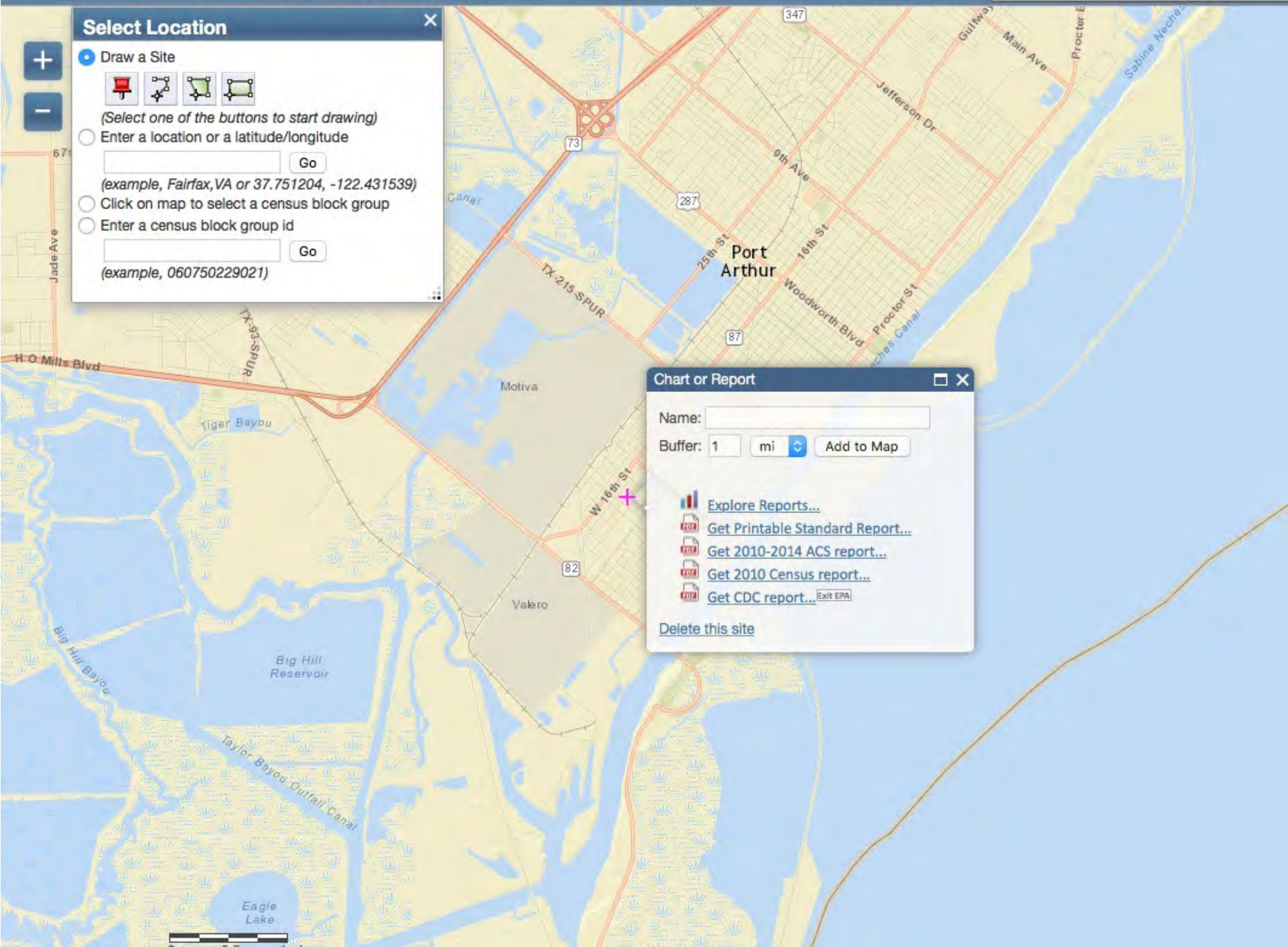
EJSCREEN: environmental justice mapping and screening tool with a nationally consistent dataset and approach for combining environmental and demographic indicators

## EJSEAT Scoring Methodology



### Select Location

- Draw a Site
  -    
  - (Select one of the buttons to start drawing)
- Enter a location or a latitude/longitude
  - 
  - (example, Fairfax, VA or 37.751204, -122.431539)
- Click on map to select a census block group
- Enter a census block group id
  - 
  - (example, 060750229021)



### Chart or Report

Name:

Buffer: 1 mi

-  [Explore Reports...](#)
-  [Get Printable Standard Report...](#)
-  [Get 2010-2014 ACS report...](#)
-  [Get 2010 Census report...](#)
-  [Get CDC report... Exit EPA](#)

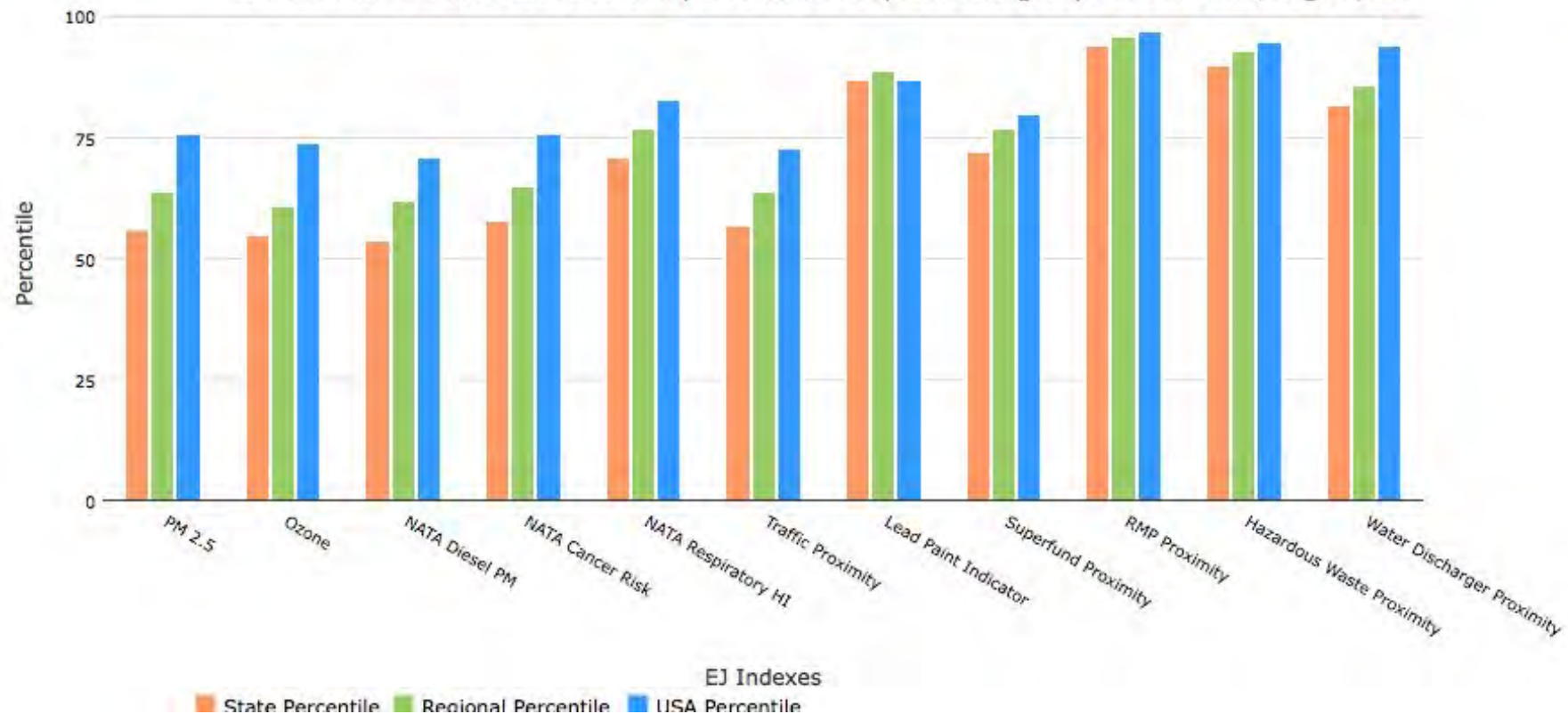
[Delete this site](#)

**EJSCREEN Report (Version 2016)**  
**1 mile Ring Centered at 29.872036,-93.950778**  
**TEXAS, EPA Region 6**  
**Approximate Population: 3,564**  
**Input Area (sq. miles): 3.14**



Selected Variables	Percentile in State	Percentile in EPA Region	Percentile in USA
<b>EJ Indexes</b>			
EJ Index for Particulate Matter (PM 2.5)	56	64	76
EJ Index for Ozone	55	61	74
EJ Index for NATA* Diesel PM	54	62	71
EJ Index for NATA* Air Toxics Cancer Risk	58	65	76
EJ Index for NATA* Respiratory Hazard Index	71	77	83
EJ Index for Traffic Proximity and Volume	57	64	73
EJ Index for Lead Paint Indicator	87	89	87
EJ Index for Superfund Proximity	72	77	80
EJ Index for RMP Proximity	94	96	97
EJ Index for Hazardous Waste Proximity	90	93	95
EJ Index for Water Discharger Proximity	82	86	94

**EJ Index for the Selected Area Compared to All People's Blockgroups in the State/Region/US**



### Sites reporting to EPA

Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0
National Pollutant Discharge Elimination System (NPDES)	0

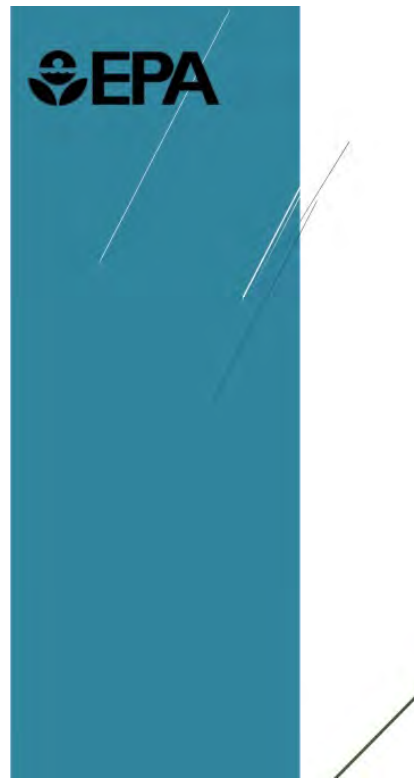
Selected Variables	Value	State Average	Percentile in State	EPA Region Average	Percentile in EPA Region	USA Average	Percentile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	8.66	9.63	22	9.45	22	9.32	33
Ozone (ppb)	37.2	45.4	8	47	5	47.4	11
NATA* Diesel PM ( $\mu\text{g}/\text{m}^3$ )	0.435	0.756	26	0.72	<50th	0.937	<50th
NATA* Air Toxics Cancer Risk (risk per MM)	40	41	42	42	<50th	40	50-60th
NATA* Respiratory Hazard Index	2.9	1.8	94	1.8	95-100th	1.8	80-90th
Traffic Proximity and Volume (daily traffic count/distance to road)	67	390	39	320	45	590	45
Lead Paint Indicator (% pre-1960s housing)	0.56	0.16	91	0.18	91	0.3	79
Superfund Proximity (site count/km distance)	0.084	0.075	75	0.072	76	0.13	61
RMP Proximity (facility count/km distance)	4.4	0.61	99	0.55	99	0.43	99
Hazardous Waste Proximity (facility count/km distance)	0.38	0.085	97	0.075	97	0.072	97
Water Discharger Proximity (count/km)	0.86	0.48	83	0.41	86	0.31	92
<b>Demographic Indicators</b>							
Demographic Index	81%	47%	90	45%	91	36%	95
Minority Population	94%	56%	86	50%	89	37%	92
Low Income Population	69%	39%	87	39%	87	35%	91
Linguistically Isolated Population	2%	8%	37	6%	49	5%	58
Population with Less Than High School Education	21%	18%	62	17%	65	14%	76
Population under Age 5	6%	7%	39	7%	41	6%	51
Population over Age 64	13%	11%	66	12%	60	14%	51

# Building on EJ 2014

Over the next five years, EPA will focus on:

Deepening Environmental justice progress in EPA's programs to improve the health and environment of overburdened communities  
Working with partners to expand our positive impact in overburdened communities

Demonstrating progress on significant national environmental justice challenges



*Draft EJ 2020 Action Agenda – May 2016*

**DRAFT**  
**EJ 2020**  
**ACTION AGENDA**

**Environmental Justice Strategic Plan**  
**2016-2020**

# Criminal enforcement?

EJ considerations? The Bush II refinery enforcement initiative

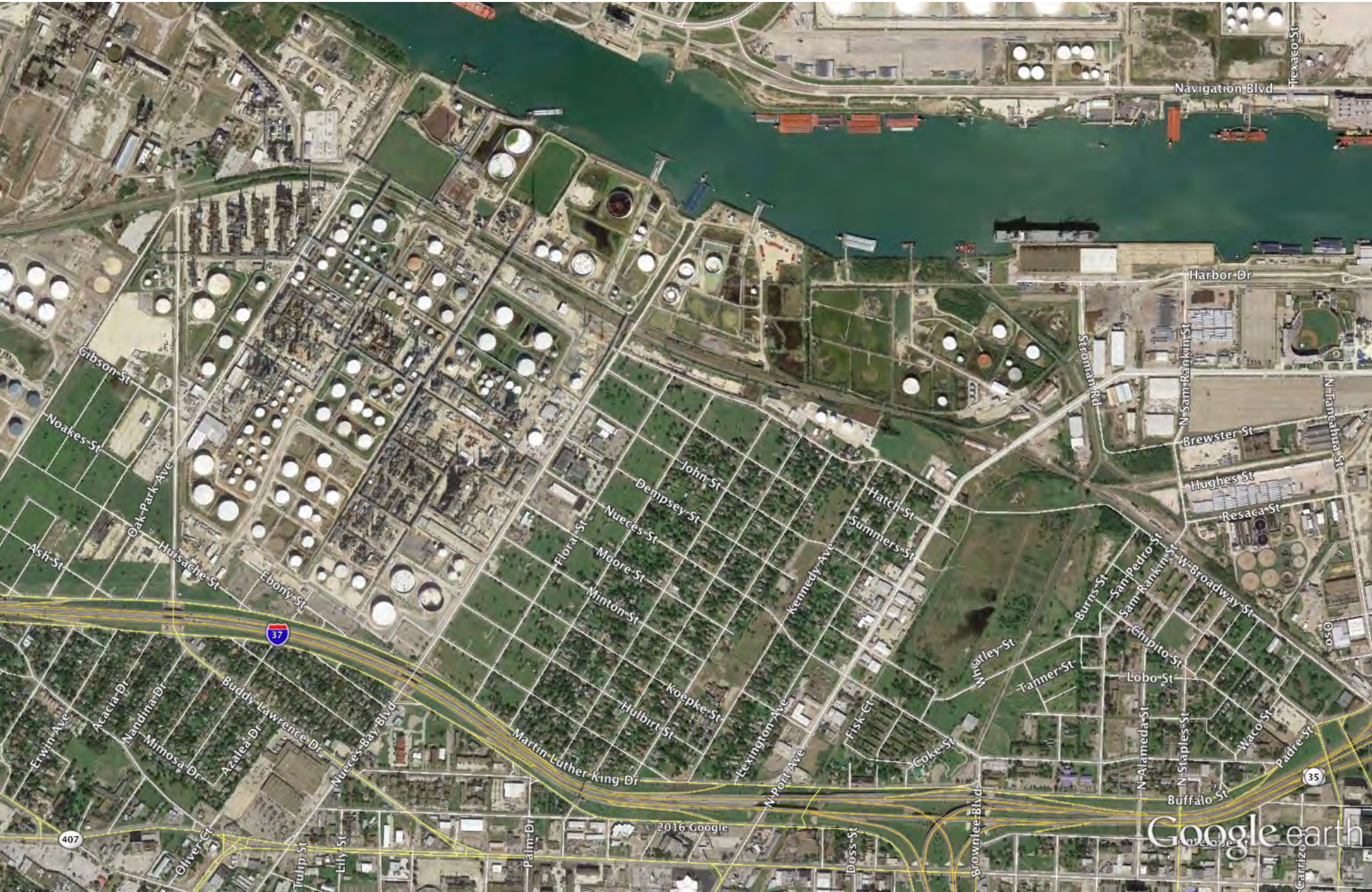
CITGO criminal prosecution: who are the victims under the Crime Victims Rights Act?

Fenceline residents in Hillcrest

Linking criminal activity to the harms claimed

Are they entitled to restitution?

# Buyouts?



Navigation Blvd

Trexaco St

Harbor Dr

Strom Rd

N Sam Rankin St

N Tantechus St

Brewster St

Hughes St

Resaca St

W Broadway St

Chipito St

Lobo St

Waco St

Padre St

Buffalo St

Carrizosa St

Gibson St

Noakes St

Ash St

Hulsache St

Ebony St

Buddy Lawrence Dr

Azalea Dr

Martin Luther King Dr

Tulip St

Lily St

Palm Dr

Doss St

Brownlee Blvd

Carrizosa St

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37

W 24th St

W 22nd St

W 20th St

W 18th St

Stillman Ave

Kosyke St

Milton St

Moore St

Van Loan Ave

Wheeler St

Dempsey St

16th St

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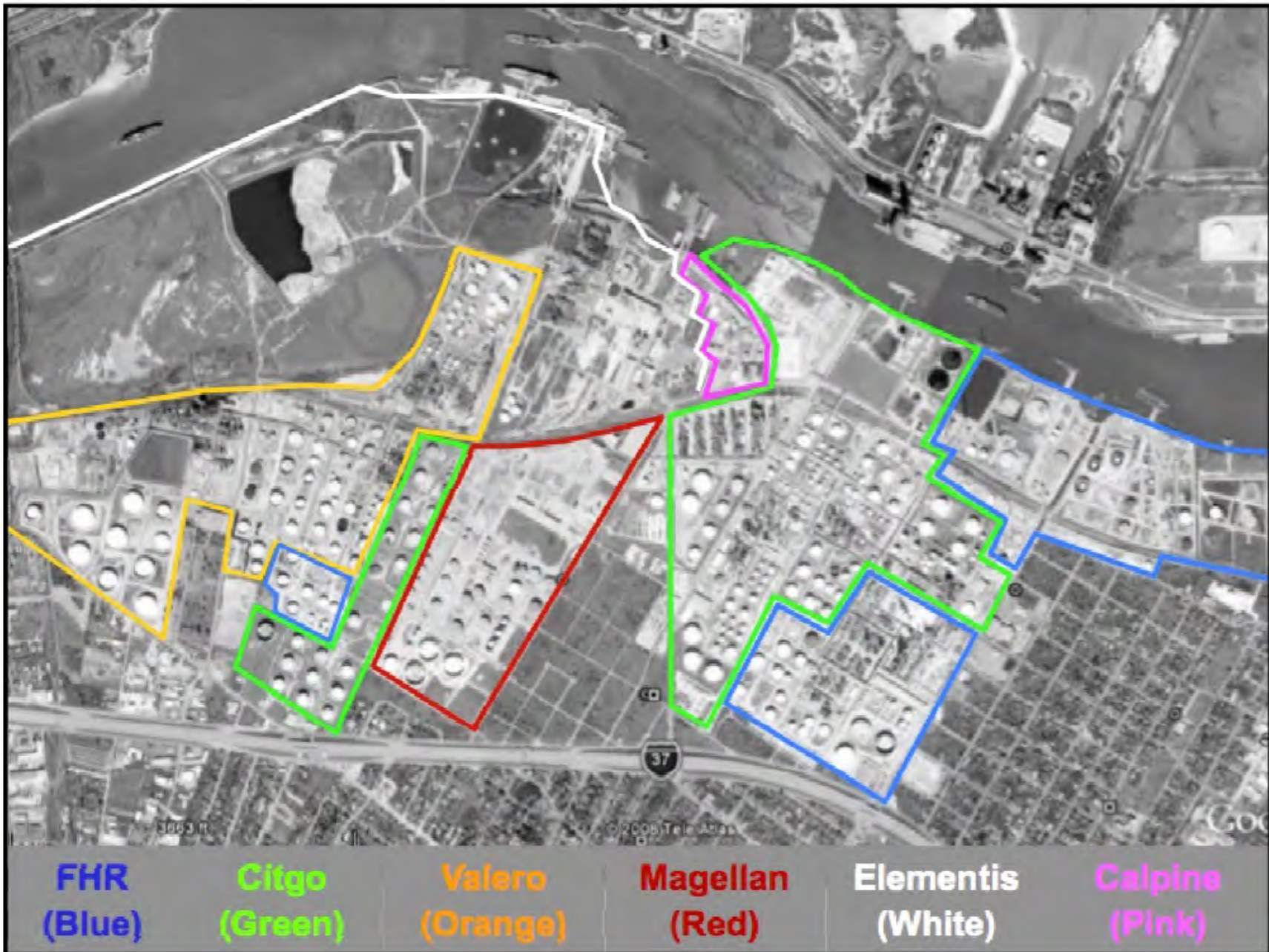
Google earth

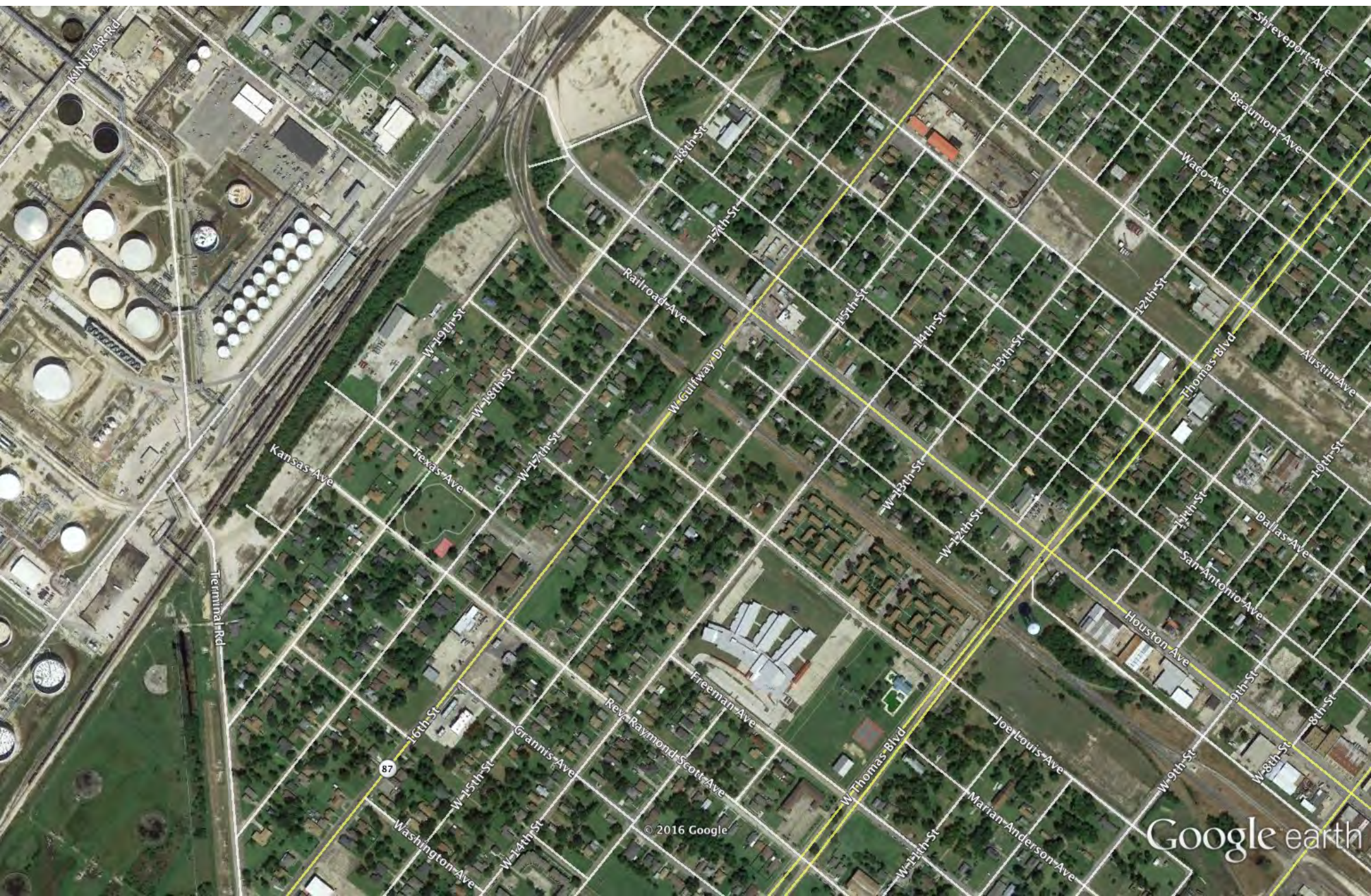


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Rarely dealing with just one company





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# EJ: whether to move public housing?



# Where is EJ going?

Increased communication

Good Neighbor Agreements

Buyouts

Corporate social responsibility

Funding to local charities

Services to the community

Warnings

Donating emergency response equipment

Health clinics

# EJ: the bottom line

EJ has not yielded a bright legal test for either intentional discrimination or disparate impact

It has had strong influence on EPA's (and other agencies') priorities and choices

As a result, while not a typical legal obligation enforceable in court, you must account for it in environmental legal strategy and litigation