

COMMENTS

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A Just Solution to Port Pollution: Tailoring the Clean Ports Program to Ensure Equitable Distribution of Inflation Reduction Act Grants

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ABSTRACT

Pollution from shipping ports disproportionately harms low-income communities and communities of color. With an eye toward environmental justice, the Inflation Reduction Act will help mitigate this disparity. Specifically, its grants relating to zero-emission port equipment and technology, implemented through the new Clean Ports Program, have the potential to lessen the air pollution burden on near-port communities and further environmental justice. The government, however, must take measures to ensure this funding reaches and elevates the communities hit hardest by port pollution. These measures include targeting outreach efforts to underresourced communities, using environmental justice research to guide decision-making, and providing transparent communication at every step of the implementation process.

INTRODUCTION

The shipping industry is responsible for an immense amount of pollution across the globe. Over 90% of international goods are transported via cargo ships.¹ Every year, these ships dump “about [one] billion metric tons of carbon dioxide into the air.”² This makes up about 3% of the world’s carbon dioxide emissions.³ The shipping industry is also responsible for 13% of the world’s nitrogen oxide emissions and 12% of sulfur oxide emissions.⁴ Additionally, ships spew carbon monoxide, methane, particulate matter, and other toxic compounds into the atmosphere.⁵ Many large container ships also burn heavy fuel oil, which emits massive amounts of greenhouse gases.⁶

¹ *Sustainable Marine Fuels*, U.S. DEP’T OF ENERGY, BIOENERGY TECHS. OFF., <https://www.energy.gov/eere/bioenergy/sustainable-marine-fuels> [https://perma.cc/CAR5-RYLM] (last visited Nov. 26, 2023).

² Jackie Northam, *Shipping Industry Is Pressured to Cut Pollution Caused by Merchant Fleet*, NAT’L PUB. RADIO (Dec. 1, 2021, 5:05 AM), <https://www.npr.org/2021/12/01/1060382176/shipping-industry-is-pressured-to-cut-pollution-caused-by-merchant-fleet> [https://perma.cc/M4JP-6EKP].

³ *Id.*

⁴ Natalie Mueller et al., *Health Impact Assessments of Shipping and Port-Sourced Air Pollution on a Global Scale: A Scoping Literature Review*, ENV’T RSCH., Jan. 2023, at 1, 1–2.

⁵ *Id.* at 2; *Ports Primer: 7.2 Air Emissions*, U.S. ENV’T PROT. AGENCY (July 17, 2023), <https://www.epa.gov/community-port-collaboration/ports-primer-72-air-emissions> [https://perma.cc/27A7-MQQM] [hereinafter *Ports Primer 7.2*].

⁶ U.S. DEP’T OF ENERGY, BIOENERGY TECHS. OFF., *supra* note 1.

If cargo ships are the blood of the shipping industry, ports are the heart. Ports are an essential component at the beginning and end of a cargo ship's journey across the ocean—and add additional sources of air pollution to the equation. Air pollution at ports comes from the ships themselves and other transportation sources, such as trucks, trains, and cargo handling equipment.⁷ Additionally, stationary sources—which include refineries, storage facilities for oil and gas, and power generation and storage facilities—pollute the air in and around ports.⁸ Many ships, vehicles, and machines at port facilities run on diesel fuel, which, when burned, releases particulate matter, carbon monoxide, sulfur oxides, and other toxic chemicals into the atmosphere.⁹ In the United States, three ports alone were responsible for “2.5 million tons of carbon dioxide equivalent” in 2019.¹⁰

Pollution from port operations is associated with negative health impacts. Air pollutants cause health problems such as “premature mortality, increased hospital admissions for heart and lung disease, increased cancer risk, and increased respiratory symptoms.”¹¹ Researchers estimate that shipping- and port-related emissions are responsible for up to 0.5% of deaths worldwide;¹² this equates to over 300,000 deaths every year.¹³ In addition, ship wastewater, oil spills, and runoff from paved surfaces contaminate the water supplies of nearby communities.¹⁴ This can affect water quality, make it dangerous to go in lakes and creeks, and prevent people from consuming fish and shellfish from local bodies of water.¹⁵ Finally, port operations cause

⁷ *Ports Primer: 7.1 Environmental Impacts*, U.S. ENV'T PROT. AGENCY (Jan. 3, 2023), <https://www.epa.gov/community-port-collaboration/ports-primer-71-environmental-impacts> [<https://perma.cc/6CDX-SV4E>] [hereinafter *Ports Primer 7.1*].

⁸ *Id.*

⁹ *Ports Primer 7.2*, *supra* note 5.

¹⁰ Savannah Bertrand & Bridget Williams, *Issue Brief: Climate Change Mitigation and Adaptation at U.S. Ports (2022)*, ENV'T & ENERGY STUDY INST. (Feb. 1, 2022), <https://www.eesi.org/papers/view/issue-brief-climate-change-mitigation-and-adaptation-at-u.s-ports-2022> [<https://perma.cc/UD2C-NERW>].

¹¹ *Ports Primer 7.1*, *supra* note 7.

¹² Mueller et al., *supra* note 4, at 22.

¹³ See Hannah Ritchie & Edouard Mathieu, *How Many People Die and How Many Are Born Each Year?*, OUR WORLD IN DATA (Jan. 5, 2023), <https://ourworldindata.org/births-and-deaths> [<https://perma.cc/U7NP-Q35B>].

¹⁴ See *Ports Primer 7.1*, *supra* note 7.

¹⁵ U.S. ENV'T PROT. AGENCY, OFF. TRANSP. & AIR QUALITY, ENVIRONMENTAL JUSTICE PRIMER FOR PORTS 6 (2020), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=>

significant noise and light pollution, which can lead to hearing impairment, sleep deprivation, and high blood pressure.¹⁶

This Note first explains how pollution at shipping ports disproportionately affects certain groups—namely, low-income communities and communities of color.¹⁷ Next, this Note discusses how a section in the Inflation Reduction Act (IRA) that authorizes grants to reduce air pollution at ports can help mitigate this disparity. This Note then examines the scope of these grants and anticipates potential challenges applicants may face. Finally, this Note analyzes the steps the government has taken to involve the public in designing its Clean Ports Program and recommends additional steps to ensure grants under this program are distributed equitably to communities that are most vulnerable to the harms of port pollution.

I BACKGROUND

The people who are hit hardest by the shipping industry's adverse impacts are low-income communities and people of color.¹⁸ Housing segregation and other systemic inequalities are largely to blame for such disparate impacts.¹⁹ With a clear focus on environmental justice, section 60102 of the IRA may help to alleviate the pollution burden on these communities by authorizing new grant programs to reduce air pollution at ports.²⁰

A. The Disproportionate Impact of Port Pollution on Low-Income Communities and Communities of Color

Low-income communities and communities of color are more likely to live near the densely packed urban areas in which most ports are located, and therefore suffer negative health outcomes.²¹ Income is closely linked with negative health outcomes from port-related

P100YMNT.pdf [<https://perma.cc/Q33D-YE4D>] [hereinafter ENVIRONMENTAL JUSTICE PRIMER].

¹⁶ *Id.*

¹⁷ This Note uses the terms “people of color” and “communities of color” to refer to Black, Brown, and Indigenous communities and other communities that have been marginalized throughout history on the basis of race or ethnicity.

¹⁸ ENVIRONMENTAL JUSTICE PRIMER, *supra* note 15, at 4.

¹⁹ *See infra* Section II.A.

²⁰ 42 U.S.C. § 7433 (2022); *see also infra* Section II.B.

²¹ KENNETH GILLINGHAM & PEI HUANG, RACIAL DISPARITIES IN THE HEALTH EFFECTS FROM AIR POLLUTION: EVIDENCE FROM PORTS 5–6 (2022).

pollution because the lower cost of living near ports forces some families to move to or remain in these areas.²² Race, however, is an even stronger predictor of who will suffer negative health outcomes from port-related pollution.²³ For example, Black families that earn incomes higher than the median face a greater burden of pollution than their white counterparts.²⁴ In fact, researchers found that “one additional vessel in a port over a year leads to 3.1 hospital visits per thousand Black residents within 25 miles of the port and only 1.1 per thousand for Whites.”²⁵

These disparities can be traced in part to historic housing segregation policies. In the 1900s, homeowners associations used restrictive covenants as a tool to keep people of color out of white neighborhoods.²⁶ While the Supreme Court declared judicial enforcement of restrictive covenants unconstitutional in a landmark case in 1948,²⁷ that did not stop homeowners associations from creating them. For example, a covenant created in 1950 stated that no lot “shall ever be leased, sold, devised, conveyed to or inherited . . . by or become property of any person other than of the Caucasian Race.”²⁸ Even after Congress passed the Fair Housing Act (FHA) in 1968, which officially outlawed racially restrictive covenants, racist language from these covenants still exists in many deeds today.²⁹

The federal government also perpetuated housing segregation through redlining. In the 1930s, the government paid the Home Owners’ Loan Corporation (HOLC) to study and label neighborhoods as “most desirable,” “still desirable,” “definitely declining,” and

²² Darryl Fears, *Redlining Means 45 Million Americans Are Breathing Dirtier Air, 50 Years After It Ended*, WASH. POST (Mar. 9, 2022, 8:00 AM), <https://www.washingtonpost.com/climate-environment/2022/03/09/redlining-pollution-environmental-justice/> [https://perma.cc/EV9E-863Z].

²³ See GILLINGHAM & HUANG, *supra* note 21, at 1.

²⁴ *Id.* at 22.

²⁵ *Id.* at 1.

²⁶ Cheryl W. Thompson et al., *Racial Covenants, a Relic of the Past, Are Still on the Books Across the Country*, NAT’L PUB. RADIO (Nov. 17, 2021, 5:06 AM), <https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination> [https://perma.cc/TH64-9SFT].

²⁷ *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948).

²⁸ Thompson et al., *supra* note 26.

²⁹ *Id.*

“hazardous, i.e., redlined.”³⁰ Desirable neighborhoods were eligible for favorable mortgage terms and federally backed loans, while declining and hazardous neighborhoods were often ineligible.³¹ It was no secret that “hazardous” communities were labeled as such due to the higher percentage of Black and immigrant families.³² Consequently, redlining isolated communities of color and prevented families from building wealth.³³ The government also used these labels to inform subsequent decisions about where to place new environmental hazards,³⁴ which included ports and port-related infrastructure. While redlining technically ended in 1968 with the passage of the FHA, historical redlining continues to harm communities today.³⁵ Appallingly, the grade the HOLC assigned to neighborhoods decades ago is still a consistent and stable predictor of pollution levels in those neighborhoods today.³⁶

In addition to these harmful vestiges of de jure segregation, other factors, such as discriminatory real estate practices, which were promoted and even required by the federal government before the passage of the FHA, contribute to this crisis.³⁷ This history of housing segregation has placed ports and other industrial operations near neighborhoods of color, causing these communities to bear the brunt of elevated air pollution.³⁸

Yet housing segregation alone does not explain why communities of color suffer greater harm than their white counterparts living near ports. These disparities within near-port communities result from systemic inequalities in numerous social determinants of health, including

³⁰ Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 ENV'T SCI. & TECH. LETTERS 345, 345 (2022).

³¹ *Id.*

³² *Id.*

³³ *Id.* at 345–46.

³⁴ *Id.* at 346.

³⁵ *Id.*

³⁶ *Id.* at 345.

³⁷ See Luis Ferré-Sadurní, *What Happens When Black People Search for Suburban Homes*, N.Y. TIMES (Nov. 18, 2019), <https://www.nytimes.com/2019/11/18/nyregion/fair-housing-discrimination-long-island.html?action=click&module=News&pgtype=Homepage> [<https://perma.cc/YD75-SMAW>] (discussing a three-year undercover investigation that studied nearly one hundred real estate agents and revealed that the agents “treated people of color unequally 40 percent of the time compared with white people.”).

³⁸ See Fears, *supra* note 22.

access to health care, quality education, and other public amenities.³⁹ For example, some immigration policies stand as a barrier to health care access for both documented and undocumented immigrants.⁴⁰ Even when people of color do have access to health care, the treatment they receive is often of lower quality than the treatment white patients receive.⁴¹ The systemic racism affecting the provision of these vital services causes communities of color to be more vulnerable to the risks port operations pose.

***B. How Inflation Reduction Act Grants Can Help Mitigate the
Disproportionate Impact of Port Pollution***

The Inflation Reduction Act represents a step toward mitigating disparities in the impact of port pollution and advancing environmental justice. After months of congressional debate, the IRA was signed into law on August 16, 2022.⁴² As its name suggests, the IRA aims to tackle growing inflation—but it does a lot more than that.⁴³ The White House claims the IRA will “lower costs for families, combat the climate crisis, reduce the deficit, and finally ask the largest corporations to pay their fair share.”⁴⁴ The IRA’s health care provisions include lowering the cost of prescription drugs and health insurance and defeating special interests in the pharmaceutical industry.⁴⁵ Additionally, its tax provisions impose a minimum tax for large corporations and crack down on tax evasion of the wealthy, thus helping to reduce the national deficit.⁴⁶

³⁹ Ruqaiijah Yearby et al., *Racism Is a Public Health Crisis. Here’s How to Respond.*, INST. FOR HEALING JUST. & EQUITY (Sept. 2020), <https://ihje.org/wp-content/uploads/2020/12/Racism-is-a-Public-Health-Crisis.pdf> [<https://perma.cc/YNG9-JAG7>].

⁴⁰ Lindsay M. Farbent, *Addressing the Disproportionate Adverse Health Effects Among BIPOC Communities as a Result of Environmental Racism*, 12 BARRY L. ENV’T & EARTH L.J. 100, 123 (2022).

⁴¹ *Id.* at 125.

⁴² Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. (2022); *see also* Kelly Anne Smith, *The Inflation Reduction Act Is Now Law—Here’s What It Means for You*, FORBES (Aug. 23, 2022, 8:56 AM), <https://www.forbes.com/advisor/personal-finance/inflation-reduction-act/> [<https://perma.cc/7K2P-3QY6>].

⁴³ Press Release, The White House, *By the Numbers: The Inflation Reduction Act* (Aug. 15, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/15/by-the-numbers-the-inflation-reduction-act/> [<https://perma.cc/PX88-M7WB>].

⁴⁴ *Id.*

⁴⁵ 42 U.S.C. §§ 1320f, 1395w-3a, 1395w-102.

⁴⁶ 26 U.S.C. §§ 55(b)(2)(A)(i), 4501(a); Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831–33 (2022).

But paramount to environmental justice are the IRA's clean energy provisions. The IRA invests \$27 billion in greenhouse gas reduction, allocating at least 60% of that investment to low-income and disadvantaged communities.⁴⁷ The IRA creates grants to be used for improving the energy efficiency and climate resilience of affordable housing.⁴⁸ For low- and moderate-income families, the IRA creates rebate programs and tax credits to increase household energy efficiency and lower the price of used clean vehicles.⁴⁹ To tackle legacy pollution, the IRA invests in air quality monitoring and clean buses and trucks, specifically in communities of color and low-income households.⁵⁰ It also reinstates the Superfund tax, which funds cleanup of polluted areas that disproportionately harm disadvantaged communities.⁵¹ Additionally, the IRA creates grants to fund community-led projects in neighborhoods that disproportionately bear the burden of climate change and pollution.⁵² Finally, section 60102 of the IRA—the focus of this Note—authorizes grants to reduce air pollution at ports.⁵³

Specifically, this section appropriates \$2.25 billion

to award rebates and grants to eligible recipients on a competitive basis . . . to purchase or install zero-emission port equipment or technology for use at, or to directly serve, one or more ports; . . . to conduct any relevant planning or permitting in connection with the purchase or installation of such zero-emission port equipment or technology; and . . . to develop qualified climate action plans.⁵⁴

The IRA further appropriates \$750 million “to award rebates and grants to eligible recipients to carry out activities described [above] . . . with respect to ports located in air quality areas designated” as nonattainment areas.⁵⁵ “Nonattainment areas” are areas that fail to meet

⁴⁷ SENATE DEMOCRATS, ENVIRONMENTAL JUSTICE IN THE INFLATION REDUCTION ACT 2 (2022), https://www.democrats.senate.gov/imo/media/doc/environmental_justice_in_the_inflation_reduction_act.pdf [<https://perma.cc/ADW9-FX23>]; 42 U.S.C. § 7434.

⁴⁸ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 300023, 136 Stat. 1818, 2027–28 (2022).

⁴⁹ 26 U.S.C. §§ 25E, 48(e), 48E(h) (§ 48E effective Jan. 1, 2025).

⁵⁰ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60105, 136 Stat. 1818, 2067–69 (2022).

⁵¹ 26 U.S.C. § 4611.

⁵² 42 U.S.C. § 7438; *see also* Press Release, The White House, FACT SHEET: Inflation Reduction Act Advances Environmental Justice (Aug. 17, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/17/fact-sheet-inflation-reduction-act-advances-environmental-justice/> [<https://perma.cc/GZ7C-J4JN>].

⁵³ 42 U.S.C. § 7433(a)(1).

⁵⁴ *Id.*

⁵⁵ *Id.* § 7433(a)(2).

the U.S. Environmental Protection Agency’s (EPA) air quality standards.⁵⁶ The Clean Air Act (CAA) authorizes the EPA to establish national air quality standards in every state and to create state implementation plans to meet these standards.⁵⁷ Under its CAA authority, the EPA has zeroed in on six pollutants for which national air quality standards are required: sulfur dioxide, nitrogen dioxide, particulate matter, carbon monoxide, ozone, and lead.⁵⁸ Once the EPA labels a city or region as a “nonattainment area,” the area must implement certain measures to control air pollution and achieve attainment.⁵⁹ Section 60102 operates to amend the CAA by inserting its provisions and embedding new grant programs into the statute.⁶⁰

II

ANALYSIS OF THE CLEAN PORTS PROGRAM

Grants under section 60102 of the IRA have the potential to improve air quality for communities near ports. However, potential applicants may face challenges when applying for grants—especially community applicants with limited resources.⁶¹ The EPA has taken steps, explained below, to involve the public in the design of the “Clean Ports Program”—its program for implementing grants under section 60102.⁶² Yet some members of the public are concerned the EPA has not done enough to involve near-port community stakeholders in this conversation.⁶³ Accordingly, the EPA should adopt additional measures to ensure its Clean Ports Program funding includes and truly benefits near-port communities, thereby promoting environmental justice.⁶⁴

⁵⁶ Clean Air Act, 42 U.S.C. § 7407(d)(1)(A)(i); *see generally* CONG. RSCH. SERV., RL30853, CLEAN AIR ACT: A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS 1 (2022).

⁵⁷ 42 U.S.C. § 7409(a); *Summary of the Clean Air Act*, U.S. ENV’T PROT. AGENCY (Sept. 12, 2022), <https://www.epa.gov/laws-regulations/summary-clean-air-act> [<https://perma.cc/Q2XD-FLHT>].

⁵⁸ CONG. RSCH. SERV., RL30853, CLEAN AIR ACT: A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS 3 (2022).

⁵⁹ *Id.* at 1.

⁶⁰ *Id.* at 3.

⁶¹ *See infra* Section II.B.

⁶² *See infra* Section II.C.

⁶³ *See id.*

⁶⁴ *See infra* Section II.D.

A. The “Who” and “What” of Clean Ports Program Grants

Clean Ports Program grants will fund zero-emission equipment and technology at or around ports. The IRA defines “zero-emission port equipment or technology” as “human-operated equipment or human-maintained technology” that (1) does not emit any air pollutants (as listed in the CAA), precursors to those air pollutants, or greenhouse gases other than water vapor; or (2) captures all these air pollutants produced by ships at ports.⁶⁵ The definition is broad enough to allow applicants to choose the technology that best suits their needs yet, by explicitly proscribing emissions of precursors to pollutants or climate-change-causing greenhouse gases, specific enough to target the most harmful air pollutants. To be eligible for a grant under section 60102, the technology or equipment must be located at or directly serve one or more ports.⁶⁶ This clean technology will likely include new electric vehicles and improved air monitoring systems in eligible locations.⁶⁷

Section 60102 includes private entities as eligible grant recipients. These include nonprofits, community groups, and other community-based organizations, but also private corporations. Section 60102 states that port authorities; state, regional, local, and tribal agencies that have jurisdiction over a port authority or port; and air pollution control agencies are all eligible to apply for rebates and grants.⁶⁸ Additionally, private entities that own, operate, or use the facilities or equipment at ports are eligible to apply if they do so in partnership with a nonprivate eligible recipient.⁶⁹

B. Challenges for Grant Applicants

Because federal grant application processes are often lengthy and complex, communities with fewer resources have a harder time preparing competitive applications. The application for section 60102 grants is posted on Grants.gov, the online portal for entities to apply for

⁶⁵ 42 U.S.C. § 7433 (2022). Section 60102 also allows applicants to use grant money “to develop qualified climate action plans,” *id.*, but that is outside the scope of this Note.

⁶⁶ *Id.*

⁶⁷ See Michael Regan, *The Inflation Reduction Act: A Big Deal for People and the Planet*, U.S. EPA: PERSPECTIVES (Aug. 26, 2022), <https://www.epa.gov/perspectives/inflation-reduction-act-big-deal-people-and-planet> [<https://perma.cc/ECQ6-6HMH>].

⁶⁸ 42 U.S.C. § 7433(d)(1). This Note focuses exclusively on the grants available under section 60102.

⁶⁹ 42 U.S.C. § 7433(d)(1)(D).

government-funded projects and programs.⁷⁰ While the website might be overwhelming for a first-time applicant, the site includes helpful tools like instructional videos and informational pages about grants and the application process.⁷¹ However, more of a challenge appears once a user opens an application. Often, there are numerous forms and subforms an applicant must complete.⁷² These forms may be complicated and daunting for first-time applicants.

For these reasons, some environmental justice advocates expressed concern about logistical challenges that communities might face in applying for IRA grants.⁷³ Overcoming “onerous paperwork burdens” takes time and resources⁷⁴—something not all communities have to spare. Additionally, low-income communities may lack the administrative capacity and political capital to successfully compete for grants.⁷⁵ For example, the EPA suggests that a successful grant writing team usually includes a senior-level manager, a project manager, a grant writer, an editor, and at least one finance expert.⁷⁶ Recognizing that grant funding is competitive, the EPA recommends that applicants obtain letters of endorsement from interested community members, groups, and “academic, political, and professional individuals or

⁷⁰ See GRANTS.GOV, <https://www.grants.gov> [<https://perma.cc/Z286-ZSEH>] (last visited Nov. 27, 2023). A System for Award Management (SAM) registration is also required to receive a federal grant through Grants.gov. *Register with SAM*, GRANTS.GOV, <https://apply07.grants.gov/help/html/help/Register/RegisterWithSAM.htm> [<https://perma.cc/6TKY-QL3U>] (last visited Nov. 27, 2023).

⁷¹ See, e.g., *How to Apply for a Federal Funding Opportunity on Grants.gov*, GRANTS.GOV CMTY. BLOG (Apr. 28, 2021), <https://grantsgovprod.wordpress.com/2021/04/28/how-to-apply-for-a-federal-funding-opportunity-on-grants-gov/> [<https://perma.cc/N3HC-2D5J>]; *How to Get Help When Using the Grants.gov System*, GRANTS.GOV CMTY. BLOG (July 7, 2021), <https://grantsgovprod.wordpress.com/2021/07/07/how-to-get-help-when-using-the-grants-gov-system/> [<https://perma.cc/2V4X-7NJK>].

⁷² For an example of the forms a federal grant applicant might be required to fill out, see *Search Grants*, GRANTS.GOV, <https://www.grants.gov/web/grants/search-grants.html> [<https://perma.cc/NWY4-K6UP>] (choose any grant; click “Package”; click “Preview”).

⁷³ Tatum McConnell, *Environmental Justice Advocates Respond to the Inflation Reduction Act*, SIERRA CLUB (Sept. 1, 2022), <https://www.sierraclub.org/sierra/environmental-justice-advocates-respond-inflation-reduction-act> [<https://perma.cc/FK2W-3YN5>].

⁷⁴ *Id.*

⁷⁵ Mark T. Imperial, *Environmental Justice and Water Pollution Control: The Clean Water Act Construction Grants Program*, 4 PUB. WORKS MGMT. & POL’Y 100, 112 (1999).

⁷⁶ *Tips for a Successful Grant Application*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/ports-initiative/tips-successful-grant-application> [<https://perma.cc/92EY-AT7A>] (last updated Aug. 18, 2023).

organizations.”⁷⁷ Some communities may not have anyone with grant writing experience, let alone a whole team of specialized experts able to dedicate their time and energy to writing and editing a grant proposal. In that vein, it is also not feasible for some communities to ask people to dedicate “several months to develop”⁷⁸ letters of endorsement.

Sure enough, these and other factors result in a statistical disparity in which high-income communities are more likely than low-income communities to receive grants.⁷⁹ Furthermore, communities with a higher percentage of people of color have a lower probability of receiving grants.⁸⁰ The effects of racial composition and income level on grant acquisition are also more pronounced for smaller communities.⁸¹

C. Steps the EPA Has Taken Toward Increased Transparency and Public Participation

The EPA has taken steps to engage the public and seek feedback on how to best structure its Clean Ports Program. As part of this effort, the EPA held two interactive public listening sessions via webinar in late 2022.⁸² Attendees included representatives from port authorities, government agencies, organizations such as the Healthy Port Communities Coalition and the Moving Forward Network, and interested individuals.⁸³ In both sessions, the EPA presented an overview of the Clean Ports Program and explained that the “Ports Initiative Team,” composed of staff from the EPA’s Office of Environmental Justice and ten regional offices, was responsible for designing and implementing the program.⁸⁴

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Imperial, *supra* note 75, at 108.

⁸⁰ *Id.* at 112.

⁸¹ *Id.*

⁸² *Clean Ports Program*, U.S. ENV'T PROT. AGENCY (Aug. 30, 2023), <https://www.epa.gov/inflation-reduction-act/clean-ports-program> [<https://perma.cc/92EY-AT7A>].

⁸³ U.S. EPA, *IRA Clean Ports Funding Listening Session*, YOUTUBE (Nov. 9, 2022), <https://www.youtube.com/watch?v=5kIIPmzxT4> [<https://perma.cc/3JPZ-SH7C>] [hereinafter *Listening Session One*]; U.S. EPA, *Inflation Reduction Act Clean Ports Funding Listening Session*, YOUTUBE (Dec. 6, 2022), <https://www.youtube.com/watch?v=dVTwn2GJMRM> [<https://perma.cc/JX8J-V9BK>] [hereinafter *Listening Session Two*].

⁸⁴ *Listening Session One*, *supra* note 83; *Listening Session Two*, *supra* note 83.

The EPA then asked attendees for input on several questions about the logistics of this program.⁸⁵ The EPA stated that it would refer to the comments made during the listening sessions when designing the Clean Ports Program going forward.⁸⁶ One of the questions on which the EPA sought input was: “How can we help ensure this program addresses concerns of near-port communities and advances environmental justice?”⁸⁷ Attendees offered lots of insight on this question.

Some attendees discussed ways to improve the accessibility of grants for applicants with fewer resources. For example, one attendee recommended that cost-benefit analyses *not* be required for funding through the Clean Ports Program.⁸⁸ The attendee reasoned that the need for clean port equipment and technology has already been demonstrated and that this extra step in grant applications imposes a heavy burden on smaller agencies and entities with limited resources.⁸⁹ Additionally, it could “penalize applications that might require underlying infrastructure improvements.”⁹⁰

Other attendees pointed out potential gaps in section 60102. For example, one near-port community member emphasized the need to consider not only “nonattainment status” but also areas where there are gaps in air quality monitoring and data.⁹¹ A subset of section 60102 funding is available only for ports in nonattainment areas.⁹² While this provision aptly devotes funding to areas that have measurably dangerous pollution levels, gaps in air quality monitoring mean not all communities burdened with air pollution are designated as “nonattainment areas.” As such, these communities will miss out on funding through this provision.

One webinar attendee remarked that the competitive nature of grant programs leads decision-makers to focus solely on outcomes and neglect the process.⁹³ The attendee cautioned against this common tendency and reinforced that “equity is both a process and an

⁸⁵ *Listening Session One, supra* note 83; *Listening Session Two, supra* note 83.

⁸⁶ *Listening Session One, supra* note 83; *Listening Session Two, supra* note 83.

⁸⁷ U.S. ENV’T PROT. AGENCY, *supra* note 82.

⁸⁸ *Listening Session Two, supra* note 83.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Listening Session One, supra* note 83.

⁹² 42 U.S.C. § 7433(a)(2) (2022).

⁹³ *Listening Session Two, supra* note 83.

outcome.”⁹⁴ Accordingly, the attendee encouraged Clean Ports Program decision-makers to award grants to applicants who are specific and intentional in how their project will engage pollution-burdened communities.⁹⁵ Such applicants might include those who explicitly name community members and organizations with whom the applicant will consult and applicants who propose mechanisms to hold themselves accountable for advancing environmental justice through their project.⁹⁶

Numerous attendees emphasized the need for “transparency, accountability, [and] high levels of participation of environmental justice communities” throughout the planning and application process.⁹⁷ One person noted that environmental justice “communities are not being included in the planning process . . . [and are] in some instances being absolutely ignored.”⁹⁸ They urged the EPA to continuously engage these communities, rather than engage them as a “one-off.”⁹⁹ Another attendee noted that there was very little representation from frontline communities on the call.¹⁰⁰ They suggested that the EPA needs to revisit how it conducts stakeholder meetings.¹⁰¹ Someone else suggested that decision-makers should document the health and environmental justice impacts of their decisions before and during the Clean Ports Program funding process.¹⁰² Finally, one attendee summarized these concerns by emphasizing the need to “meet people where they’re at” and “elevat[e] the level of lived expertise” throughout the grant proposal and application process.¹⁰³

Consistent with these concerns, several attendees commented on the accessibility of the webinar itself. While the EPA made both sessions accessible for Spanish speakers by offering live interpretation and

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Listening Session One, supra* note 83.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Listening Session Two, supra* note 83. “Frontline” refers to communities that climate change affects “first and worst.” *Frontline and Fenceline Communities*, THE CLIMATE REALITY PROJECT, <https://www.climaterealityproject.org/frontline-fenceline-communities> [<https://perma.cc/94EA-WGAW>] (last visited Nov. 29, 2023).

¹⁰¹ *Listening Session Two, supra* note 83.

¹⁰² *Id.*

¹⁰³ *Listening Session One, supra* note 83.

transcription,¹⁰⁴ it failed to take other crucial steps to ensure that the communities that will be most affected by Clean Ports Program funding could participate in the listening sessions. Notably, both sessions were held during the workday.¹⁰⁵ Multiple attendees raised concerns that this schedule made it difficult for communities and their representatives to participate in the webinars.¹⁰⁶ For example, during the first session, one attendee suggested that the EPA hold evening sessions or offer compensation for wages lost due to attendance.¹⁰⁷ The Ports Initiative Team Lead apologized for the timing of the sessions, yet did not explain why the EPA chose to hold the session in the middle of the day or demonstrate an inclination to consider rescheduling the second session, which was held nearly a month after the first session.¹⁰⁸ If the EPA was truly “doing [its] best to hear from a lot of different voices,” as the Team Lead suggested in her response to the attendee’s comment,¹⁰⁹ it could have moved the second session to later in the day, added an additional session, or made some other effort to involve those who could not afford to spend two hours in the middle of the workday attending an EPA webinar.

In addition to holding these two listening sessions, the EPA solicited comments on the Clean Ports Program design through a Request for Information.¹¹⁰ One of the EPA’s questions again centered on how it could ensure the Clean Ports Program “addresses concerns of near-port communities and advances environmental justice.”¹¹¹ Many commenters offered additional insight on this question.

One commenter advised the EPA to begin by educating community members about the program through “outreach and inclusive, robust community engagement.”¹¹² They emphasized the need to take into consideration “the lived experiences and expertise of environmental

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; *Listening Session Two*, *supra* note 83.

¹⁰⁶ *Listening Session One*, *supra* note 83.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ U.S. ENV’T PROT. AGENCY, *supra* note 82.

¹¹¹ Environmental Protection Agency, *Request for Information – Transportation Programs*, REGULATIONS.GOV (Nov. 3, 2022), <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0874-0002> [<https://perma.cc/3A5N-AWDF>].

¹¹² WE ACT for Environmental Justice, Comment Letter on EPA Transportation Programs (Jan. 18, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0874-0105> [<https://perma.cc/93QA-7GNU>].

justice communities” to “maximize benefits for these communities.”¹¹³ Another commenter encouraged the EPA to employ “Just Transition Principles to inform all of its work.”¹¹⁴ This, the commenter stated, should involve “community controlled projects that enable community leadership from inception to implementation.”¹¹⁵ Similarly, another commenter noted that “members of impacted communities are the actual experts, since they are directly exposed to and live with the impacts of EPA’s decisions.”¹¹⁶ The commenter also underscored the importance of accessibility and public participation throughout the Clean Ports Program funding distribution process.¹¹⁷ They included concrete suggestions for eliciting participation, such as holding “[e]vening and weekend meetings to promote public participation from working community members,” providing educational and application materials in multiple languages, and allowing community members to engage with and provide feedback to applicants.¹¹⁸

Overall, public comments from the listening sessions and the Request for Information fell into two main categories. First, people urged Clean Ports Program decision-makers to make the grant application process accessible and not overly burdensome for near-port communities seeking funding. Second, people emphasized the need for the EPA to ensure that other applicants—especially government agencies and private entities that are often further removed from community interests—involve near-port communities in every step of their planning and decision-making, since new projects under the IRA’s section 60102 will affect these communities the most.

D. Future Recommendations

The EPA must both act on the public’s recommendations and take additional steps to ensure equitable distribution of section 60102 funding. Studies and resources on the distribution of federal funding through other programs can offer insight into how to ensure Clean Ports Program funding reaches and benefits low-income communities and

¹¹³ *Id.*

¹¹⁴ Climate Justice Alliance, Comment Letter on EPA Transportation Programs (Jan. 18, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0874-0019> [https://perma.cc/W3CB-SYPS].

¹¹⁵ *Id.*

¹¹⁶ Moving Forward Network, Comment Letter on EPA Transportation Programs (Jan. 18, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0874-0028> [https://perma.cc/Q6EF-9UYK].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

communities of color. For example, one study on flood mitigation funding—which found that socially vulnerable counties were less likely to receive flood mitigation grants—offered ways the government could improve the grant program.¹¹⁹ The researchers suggested the government could “provide grant writing and application training and support to socially vulnerable communities, provide targeted marketing to socially vulnerable communities, and extend the application deadline for socially vulnerable communities.”¹²⁰ They further recommended that the government use the Center for Disease Control and Prevention’s (CDC) Social Vulnerability Index (SVI) to determine which areas should be the primary focus of these interventions.¹²¹

A resource for COVID-19 relief funding suggested similar strategies for equitable grant allocation.¹²² These strategies included offering technical assistance to help applicants learn about grants and access funds, making resources and grant applications available in multiple languages, and using the CDC’s SVI tool to identify which communities most need funding.¹²³ The resource also suggested hosting town halls to seek input on how federal funding should be used.¹²⁴

Additionally, in 2021, the National Association for the Advancement of Colored People (NAACP), recognizing the government’s responsibility to advance “equity, civil rights, racial justice, and equal opportunity,” put forth resolutions regarding federal grant distribution.¹²⁵ These resolutions demanded that agencies distribute funding equitably and publicly report funding results every year.¹²⁶ Furthermore, the NAACP urged the government “to enforce

¹¹⁹ Jenna Tyler et al., *Is Flood Mitigation Funding Distributed Equitably? Evidence from Coastal States in the Southeastern United States*, J. FLOOD RISK MGMT., Jan. 18, 2023, at 1.

¹²⁰ *Id.* at 10.

¹²¹ *Id.*

¹²² See PATTI BANGHART ET AL., STRATEGIES TO GUIDE THE EQUITABLE ALLOCATION OF COVID-19 RELIEF FUNDING FOR EARLY CARE AND EDUCATION 3 (2021), https://buildinitiative.org/wp-content/uploads/2021/12/ABC-brief_ChildTrends_Dec2021.pdf [<https://perma.cc/YE4R-FCCL>].

¹²³ *Id.* at 3–4.

¹²⁴ *Id.* at 3.

¹²⁵ NAACP, NAACP RESOLUTIONS 23–24 (2021), https://naacp.org/sites/default/files/documents/Resolutions%202021_final.pdf [<https://perma.cc/4TJG-PNWB>].

¹²⁶ *Id.* at 24.

transparency and accountability in disbursement and tracking of federal dollars to ensure equality and racial justice.”¹²⁷

All these strategies could be applied to the Clean Ports Program grant distribution process. For the government to ensure it allocates section 60102 funding equitably, it must take several steps consistent with the recommendations from the resources above and the public comments obtained during the listening sessions and Request for Information.

First, the government must target outreach to and tailor communication for communities that are more likely to suffer greater harm from port pollution, but are less likely to receive federal grants.¹²⁸ Any town halls, webinars, or other informational events should be held at a variety of times—including during nonbusiness hours—to make public participation more accessible. Additionally, for this step and the ones that follow, resources should be accessible for non-English-speaking constituents.

Second, the government should use existing data on disparities in grant acquisition based on income, race, and community size to prioritize grant awards. For example, the EPA could use the CDC’s SVI tool to identify which communities might benefit the most from Clean Ports Program grants. It could then prioritize awarding grants to these communities.¹²⁹ The government could also build these considerations into the grant allocation process for private entities; it could consider the community demographics near private applicants’ port operations and prioritize awarding grants that would benefit communities that are more vulnerable to port pollution.¹³⁰

Finally, as the NAACP points out, the government must be transparent throughout the grant distribution process.¹³¹ The government should publish the criteria decision-makers focus on while

¹²⁷ *Id.*

¹²⁸ See generally Ryan Ojerio et al., *Limited Involvement of Socially Vulnerable Populations in Federal Programs to Mitigate Wildfire Risk in Arizona*, 12 NAT’L HAZARDS REV. 28, 34–35 (2011) (“[T]he factors that increase vulnerability are the same ones that limit access to power and resources, thus perpetuating social inequalities.”).

¹²⁹ See generally *id.* at 35; Lois DeBacker & Joe Evans, *Making Federal Infrastructure Funding Equitable—What Philanthropy Can Do*, NONPROFIT Q. (Apr. 4, 2022), <https://nonprofitquarterly.org/making-federal-infrastructure-funding-equitable-what-philanthropy-can-do/> [<https://perma.cc/QV8P-A2TQ>].

¹³⁰ See generally Ojerio et al., *supra* note 128, at 35 (suggesting social vulnerability criteria could be included in a federal grant application “to help focus resources on th[o]se at-risk communities.”).

¹³¹ NAACP, *supra* note 125, at 24.

evaluating applications so communities can better understand the decision-making process and spend their resources wisely in preparing applications for future funding opportunities. The government should also document who applies for grants, including applicants' demographics, and make this information publicly available. Similarly, a list of entities that receive grants under the Clean Ports Program must be available, along with detailed explanations of the projects the funding will support. To ensure full transparency and hold awardees accountable, the list should include information about how each project will involve community stakeholders and advance environmental justice initiatives for near-port communities.

CONCLUSION

The grants in section 60102 of the IRA have the power to advance environmental justice by lessening the pollution burden and improving the health of near-port communities. However, the grants will be effective only if historically marginalized near-port communities can access the funds and actively participate in project development and implementation. As such, the government must take steps to ensure its grant-related communications are accessible, the application evaluation procedures are equitable, and that decision-makers prioritize awarding grants to help the communities most affected by port pollution.

