

National Press Club

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“Environmental Justice: Hearing Communities through the Economic Din”

In his State of the Union Address last month, President Obama described the “urgent” challenge of keeping alive the shared American “Story of Success,” the basic American promise of equal opportunity for all. He said, “We can either settle for a country where a shrinking number of people do really well while a growing number of Americans barely get by, or we can restore an economy where everyone gets a fair shot, and everyone does their fair share, and everyone plays by the same set of rules.”

Nowhere do those of us engaged in the work of environmental protection have a more direct and promising opportunity to rise to this challenge, than in the effort to secure Environmental Justice. EPA’s working definition of 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.”

Environmental justice (or EJ) is not a new issue, but it is a vexing one – one with which EPA has been struggling for at least half of its life as an institution.

Let me start us off today by offering a few organizing thoughts, drilling down a bit on both what environmental justice is and *why* it is. I’ll then share some recent developments at EPA relative to the issue.

To my way of thinking, when we talk about environmental justice, we’re talking generally about the possibility of disparate levels of protection from environmental harms based on economic class, race, or other demographic factors. And this disparate protection, it seems to me, breaks out on two distinct but sometimes connecting planes: susceptibility and exposure.

In terms of susceptibility, we are aware that there are some subpopulations that have a higher dose-response susceptibility to environmental contaminants than experienced by the general public. Children and the elderly are perhaps the most obvious examples. But people who suffer from disease, are in poor health, or have inadequate access to health care may also have higher susceptibility.

The exposure plane, to my way of thinking, centers principally on the intersection between poverty and environmental degradation. With poverty there tends to flow political impotence and invisibility, a lack of voice, a lack of access, and an educational differential that can produce a sense of helplessness and powerlessness in the face of environmental worries and harms. With poverty also flows a certain predetermination regarding where you live, where your kids go to school, etc. You live in the poorer parts of town where housing is economically accessible to you. You have fewer choices along these lines available to you than people of means.

One of the factors that tends to push down property values and the cost of residential housing, therefore making it more accessible to the poor, is proximity to commercial and industrial zones, highways, and the like. There is a cost to such proximity. If you live where the polluting activities in your community

are concentrated, your exposure to pollution and the resulting risks may well be greater than the exposure of the non-proximate community. And so we see the potential for disparate environmental burden based on economic class.

And, in our country, because of our difficult history with race, and the differential in economic opportunity that has attended that history, we have seen a close relationship historically between economic class and race. And while we have made great strides, I dare say that we as a society have not yet fully broken free from that legacy. And so, just as we should not be surprised to see a differential in environmental burden based on economic class, we should likewise not be surprised to see a differential in burden breaking out along the lines of racial identity.

It is of this differential, I think, that we speak when we refer to environmental justice. Now, to my mind, the environmental justice issue breaks into two principal areas of challenge. First, providing procedural justice, and second, providing what I will call normative justice.

Procedural justice contemplates compensating in some way for the reduced opportunities to participate in environmental decision-making that tend to flow with poverty. More affluent communities have the means to access and process environmental information and the resources to retain counsel to advocate on their behalf; the means to protect their interests and rights. None of this comes readily to the poor communities, and thus the need to proceed with intention to equalize the opportunity for access, engagement and involvement.

Normative justice contemplates addressing the normative implications of differential exposures to pollution. In other words, if a community is living with a disproportionate pollution burden, or is likely to experience a pollution increase as a result of new and proximate industrial activity, how can we ensure that their health is not compromised? Beyond the basic and ordinarily protective environmental norms, are there circumstances in which additional measures should be considered or required – where the norms themselves should be adjusted to deal with localized anomalies?

These questions present a complex sort of challenge. We can more readily devise solutions to the procedural justice issue, but the normative justice challenge is a tough nut to crack. It raises important questions of science, in terms of synergistic properties of pollutants, cumulative impacts, and the intersection of environmental health and other public health vectors, and also serious public policy issues that go fundamentally to how we organize as a society around the presence of polluting activities.

But notwithstanding the complexity of the issues, we need to break through them and find sensible solutions that are just and that meet our public health and economic needs as a country.

PLAN EJ 2014

So, during the Obama Administration, we have been working on both the procedural and normative challenges of EJ. At the very outset of her tenure as EPA Administrator, Lisa Jackson identified

Environmental Justice as a key priority, which led to the development of EPA's flag-ship EJ roadmap – *Plan EJ 2014*.

Plan EJ 2014 is a comprehensive framework for advancing EPA's environmental justice priorities that seeks to integrate EJ considerations into the Agency's core business and operating functions. Its areas of focus:

- Rulemaking
- Permitting
- Compliance and Enforcement
- Supporting Community Based Programs, and
- Fostering Administration-wide Action on Environmental Justice

In addition, *Plan EJ 2014* discusses some specific initiatives already underway, such as the effort to reform EPA's Civil Rights Program, and, in particular, its program under Title 6 of the Civil Rights Act and EPA's implementing regulations, which prohibit discrimination, by intent or in effect, based on race, color, and national origin, by entities receiving Federal financial assistance, such as state and local governments.

EJ LEGAL TOOLS

Let me focus on one particular area for "Tools Development" referenced in Plan EJ 2014. The Plan included a charge to my office, the Office of General Counsel, to identify opportunities under EPA's current statutory authorities to advance environmental justice.

We responded to that charge by just recently issuing a document called *EJ Legal Tools*, accessible through EPA's website. (<http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/ej-legal-tools.pdf>)

EJ Legal Tools is a 108-page overview of discretionary legal authorities that are available to EPA to address environmental justice considerations in various facets of the Agency's work.

Importantly, this Document dispels any notion that federal environmental law and environmental justice are mutually exclusive priorities; it points rather to the conclusion that federal environmental law offers ample opportunity to address EJ concerns.

We developed *EJ Legal Tools* principally for the Agency's benefit -- for use by EPA staff and policy makers alike. This said, we have issued it as a public document, as we think it may hold value as a reference point for state and local governments as they consider their own authorities in relation to environmental justice concerns, and for communities as well.

Notably, *EJ Legal Tools* focuses on EPA as the implementer. Many EPA programs are implemented by states, and considering the state role in advancing EJ is an important piece of the work ahead. But *EJ Legal Tools* examines as a starting point the role of EPA as the implementer under federal environmental law.

In this document, we discuss EJ-relevant authorities available in each of the areas of the Agency's programmatic work – air, water, waste, toxics, and so on. And that is how the document is organized. That said, there are a number of cross-programmatic themes that emerge from the document, as follows:

Standard-setting and rulemaking: As reflected in *EJ Legal Tools*, EPA has broad authority to consider impacts on affected populations, including EJ populations, in deciding to undertake standard-setting, or setting the level of a standard.

1. For example, National Ambient Air Quality Standards allow for consideration of the needs of sensitive subpopulations, which may include EJ communities, for protection from public health risks.
2. EPA can also ensure that water quality standards designed to protect fish consumption are set at levels that protect not only the general population but also subpopulations consuming higher levels of fish and shellfish.

Permitting: EPA permitting statutes typically require public participation in permitting process and consideration of the effects of permitted activities on health and the environment. Our permitting authorities frequently give EPA discretion to consider potential effects on EJ populations.

For example, section 3005 of RCRA authorizes permit conditions that prevent a facility from posing a threat to health or the environment of the surrounding community, and this includes EJ communities.

Information-gathering: EPA's research and information-gathering and dissemination authorities under its various statutes give the Agency discretion to focus attention on the impacts of regulated activities on EJ populations.

Public involvement: EPA has broad authority to enable and ensure public participation in environmental decision-making, and applicable statutes and regulations often require public notice and an opportunity to comment on particular actions. EPA has the latitude to implement these authorities in a manner that ensures that potentially overburdened EJ communities have full access to available information and adequate opportunities to participate in the environmental decision-making process.

Grants / Procurement: Spending and funding decisions can be made under many EPA programs in a manner that is sensitive to and considers the potential for advancing environmental justice.

Protecting the Environment on Tribal Lands: While a topic unto its own, the document addresses the unique circumstances that exist in implementing environmental protection on Tribal lands and the opportunities for addressing the environmental justice considerations that so often arise in that setting.

CONCLUSION

So, there is a very brief overview of *EJ Legal Tools*. As it reflects, our environmental laws provide no reason for not responding to environmental justice concerns; rather they are replete with opportunities to ensure the fair treatment and meaningful involvement of all people with respect to the development and implementation of environmental requirements and programs.

My hope is that *EJ Legal Tools* will be an important reminder of this truth and also a useful reference and meaningful resource that will enable forward movement in the effort to deliver environmental protection in a manner that is just and equitable.

This is an issue on which we are moving with purpose down the path, but know that we still have a ways to go. We'll know we've arrived when we can guarantee that no one's environmental health is compromised because of their race, national origin, or income level and all have equal access both to the environmental decision-making process and to a healthy environment in which to live, learn, and work.

I thank you for your attention.