



Environmental Justice

The past few years have been a transformational period for environmental justice in the United States. Our aim for this issue of *EM* was to discuss major recent environmental justice actions, what has been driving this push, and what has been put in place to ensure that the topic will not be falling off in coming years. We wanted to hear from as many different types of perspectives as possible—in this case, legal, youth activism, industrial, and community groups—and so we are fortunate to have contributions from four experts on these topics.

Environmental justice (EJ). Two words that many in the industry rarely if ever heard prior to the last few years. My first professional introduction to the issue was 16 years ago walking into a public hearing in New York when a senior consultant told me, “Don’t worry about this hearing. It won’t hold up the project. If we get any negative comments, it’ll likely just be nuisance odor and noise stuff.” That never sat well with me. Recently, we have seen a push to get past transactional community engagement models built around seeking permit approvals to sustainable community partnerships based on adaptive stakeholder engagement models. Sites are identifying if they are in an EJ area (based on state-specific census-based screening thresholds) and then, in some cases, calculating their potential cumulative impacts on the surrounding community. Regulatory action and funding increases are pushing these parameters at the federal, state, and local levels. Much of this is centered around components of the generally accepted definition for EJ, “the fair treatment and meaningful involvement...” in environmental decisions that affect local communities.

Many in environmental professions are not accustomed to considering social issues on their projects, things that don’t necessarily fit neatly into a spreadsheet. But for us as environmental practitioners to best serve our clients in the most ethical and responsible way, it means embracing the uncomfortable and listening to the needs of the community, while also fighting for your project. Effective EJ/community engagement programs can be seen as being good for a company’s bottom line—likely leading to more community support, fewer enforcement issues, and greater employee engagement and retention.

In this issue of *EM*, we hear from four EJ experts and their coauthors: Hilary Jacobs from Beveridge and Diamond, Rhea Goswami from the EJ Coalition, Tequila Smith and Charles Giordano from Covanta, and Ralph Morris from Ramboll Consulting and Groundwork Richmond.

Though some of you may be asking, why now? Environmental justice has been around for decades since Dr. Robert Bullard and others first championed the cause in various southern states. NJ State Senator Troy Singleton, the author and champion of New Jersey’s landmark environmental justice law said that timing was key to the law’s passage.

“After years of waiting, we finally had the momentum needed to get this bill to the finish line in the wake of George Floyd’s murder. It was an opportunity to turn this pivotal moment in our history into a movement – one where brown and black lives matter in crafting police reform, education policy and even environmental regulations. Environmental justice is a key pillar in that effort. There was an urgency to get this done – once and for all.”

Since New Jersey passed its law in September 2020, we have seen more than 30 states advance EJ actions. These actions take a variety of forms, from acknowledging EJ as an issue and providing a definition of environmental justice, to assembling a working group, establishing state-specific goals, creating a GIS-based state screening tool, and in a handful of cases, establishing a permitting program that incorporates EJ into decision-making. If a state is potentially considering implementing an EJ-based permitting program, a critical indicator to follow would be the presence or lack of a state-specific screening tool. To date, 16 states have such a tool, but only two, New York and New Jersey, have pushed for the permitting program. New York recently surpassed New Jersey for the strictest permitting plan in that the state is not proposing any exceptions for applicable sites when New Jersey allows for a narrow compelling public interest exception.

The NJ model is unique due to the fact that at the time of passage, it was the only state to have the mandate to deny operating permits in cases where projected undue impacts in overburdened communities could not otherwise be avoided. New Jersey is still finalizing the implementation regulations after receiving 1157 pages of comments and severe pushback from industry. Applicable sites have to submit an environmental justice impact statement (EJIS) and may then be assessed local impact control technology (LICT) conditions as a means to try and remedy any projected undue impacts. This is controversial as any such conditions may likely add considerable financing to a development project.

While trying to untangle all of this will likely mean assessing impacts on a site-by-site basis, it has been the cumulative effect of many sites and emission sources in the same vicinity over extended periods that has really caused the need for EJ. Any distinct site may be operating within their allowed parameters and trying to minimize impacts, but still contributing to an ambient problem locally. Then, unfortunately, there are sites with less than stellar environmental management systems, track records of notices of violation (NOVs), and high likelihood that they are located by highways and superfund sites and densely populated areas. Environmental issues often make people a bit uncomfortable because at some point you come to understand that many of these issues are interconnected, and industrial activity almost always leads to environmental and health impacts; the trick is trying to minimize each.

Federal actions are critical to advancing EJ, as the articles in this issue detail. While states will take the lead on permitting and often issue specific initiatives like lead pipe removal, the federal government has stepped up through increased funding opportunities through the Justice40 initiative, Inflation Reduction Act grant funding, and the Biden administration putting EJ at the heart of everything they do in accordance

with various Biden executive orders. As this article was being written, the Biden Administration announced US\$550 million for a new Environmental Justice Thriving Communities Grant-making (EJ TCGM) program. This new program will fund up to 11 entities to serve as grant makers to community-based projects that reduce pollution. Selected grant makers will develop an efficient process so that organizations that historically have faced barriers to receiving funding can more seamlessly apply for grants that address environmental harms and risks.

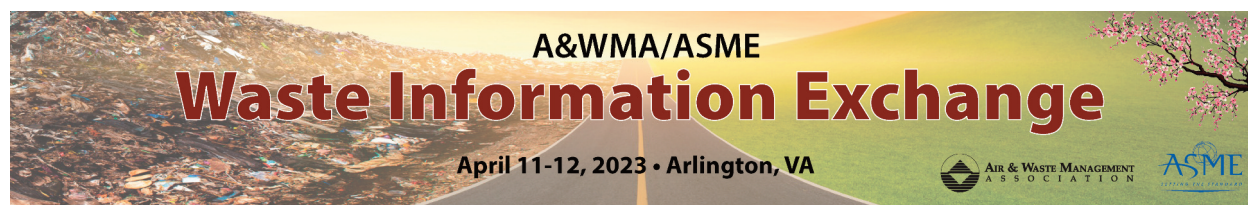
Finally, large projects, permitted through the National Environmental Policy Act (NEPA) have seen an increased role for EJ in the last few years due to guidance from the Council on Environmental Quality (CEQ) on how to best engage with communities and provide them economic opportunities associated with the projects. However, there are some stumbling blocks that still need to be worked through. As an example, many EJ groups support commercial renewable energy projects, but those projects require transmission upgrades that have notoriously been slowed due to local objections despite

the fact that they are projects that span many jurisdictions. Such projects are vital to meet various clean energy goals and decarbonize our economy, thereby also reducing climate impacts felt in EJ areas.

Sadly due to a high risk of exposure to these impacts and often a decreased capacity to respond to them, people in EJ areas often also bear an undue level of climate risk. The Brookings Institute recently released an inciteful policy brief titled, "How to Reform Federal Permitting to Accelerate Clean Energy Infrastructure: A Nonpartisan Way Forward". The Federal Permitting Steering Council (FPSC) will soon be leading a large working group to hopefully establish a reforms package that can make it through Congress and ensure levels of community engagement that the public deserves.

We all can play a meaningful role, and as you will see in the following articles, we all come from different perspectives on these issues. It is vital to consider all points and bring up any potential bottleneck concerns early in the process. **em**

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