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THE ENVIRONMENTAL JUSTICE ACT: SAME PROBLEMS WITH NO SOLUTION?

by MARGARET EGAN

Environmentalism is a political and rhetorical trend at the moment, but little has been said about the most environmentally vulnerable areas; particularly low income, minority and urban neighborhoods. Grassroots organizations and environmental justice advocates have long been fighting for these communities. For example, the Little Village Environmental Justice Organization (LVEJO) is working to ensure that residents of the Little Village community, on the South Side of Chicago, regardless of race or income level have a say in the environmental policies that affect their health and have equal access

to healthy communities where they can work, pray, live and go to school.¹ The federal government has implemented several policies focused on evaluating the environmental impact of factories and industries; however these actions appear to have little practical impact on vulnerable communities like Little Village.

Federal environmental justice policies have focused on the use of impact studies to evaluate the environmental impact of industry on surrounding communities. The first was the National Environmental Policy Act of 1969 (NEPA), which requires federal agencies, under the direction of the Environmental Protection Agency (EPA), to assess the environmental impacts of proposed major federal initiatives and their alternatives.² There are five core considerations that are to be included in a NEPA analysis.³ The first is the consideration of the demographic composition of the affected area.⁴ Second, NEPA requires a review of the local health data addressing exposure to environmental hazards.⁵ Third, the assessments must include recognition of factors that may amplify the environmental effects of the proposed action, including social and economic factors.⁶ Fourth is a development of strategies for overcoming barriers to participation by those impacted. Finally, the assessments must look at diverse constituencies from affected communities.⁷

In 1994, President Bill Clinton issued Executive Order 12898 (Executive Order), expanding on the idea of NEPA. The Executive Order requires “each federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”⁸ Moreover, 17 specified federal agencies, including the EPA, must work in concert to address environmental justice concerns.⁹ Under the Executive Order, environmental justice is defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, educational level or income with respect to the development, implementation and enforcement of environmental laws and regulations in order to ensure that minority and low-income communities have access to public information and that no minority or low-income population is forced to shoulder a disproportionate burden of the negative health and environmental impact of pollution.”¹⁰

Senate Bill 642 (S.B. 642), introduced in February 2007, will codify the Executive Order into federal law.¹¹ While these three policies require an impact

analysis before implementing a policy, there is no requirement to address any issues that may be exposed by the environmental impact studies.¹² However, the EPA enforcement of the impact statement requirement has regressed.¹³ Environmental justice groups point to shortcomings in EPA procedure.¹⁴ According to Environmental Justice activists, the Bush Administration has failed to ensure that the notion of environmental justice has been integrated into the EPA.¹⁵ “According to the EPA’s own Inspector General, the EPA has failed to ensure that goals, objectives, and performance measures have been set to ensure that environmental justice is achieved.”¹⁶

FEDERAL ACTION FAILS TO ASSIST THE MOST VULNERABLE COMMUNITIES

According to LVEJO Executive Director Kim Wasserman, the Executive Order was a good first step in exposing the problems associated with Environmental Justice communities.¹⁷ However, she notes, the Executive Order does not force the EPA to take any action, thus the Agency fails to help communities and simply reviews the plans as required but does not require the companies to make any changes.¹⁸ Wasserman also argues that the EPA and industries have similar interests to simply maintain their project budget, which is why they fail to understand how the impact studies can help and how industry impacts people.¹⁹ Rather than the EPA using the law to help the community, it falls on the community to figure out how to use the law to its benefit.²⁰

Industry, however, does have a profound impact on these communities. A 2001 Harvard University School of Public Health study evaluated particulate matter and health effects of the only two Chicago power plants situated between the Little Village and Pilsen neighborhoods.²¹ The study found that Little Village has seen 41 premature deaths per year, 2,100 new asthma attacks per year, and 500 emergency visits per year as a result of the two power plants.²² The Harvard study concludes that increased particulate matter in the air has caused these negative health effects.²³

Given the impact of industry, fighting the relocation of industry in vulnerable communities is critical, but environmental justice organizations face multiple obstacles. For example, in 2000, MRC Polymers opened a plastics factory in Little Village over the strong objection of the community.²⁴ While the community argued that the land should be developed into a park, Mayor Daley and Alderman Ricardo Munoz instead sold eight acres of land to MRC

Polymers, allowing the factory to be built on a brown field site.²⁵ Construction of the MRC factory not only increased pollution, but also prevented the community from adding a second park for its 95,000 residents.²⁶ Moreover, the one park available to Little Village residents is realistically accessible only to one-quarter of the community because of gang boundaries.²⁷ According to LVEJO, Little Village has a 64 percent childhood obesity rate, primarily because of the lack of open space for children to play.²⁸ Despite these negative health effects, neither the EPA nor the city or the Corporation takes steps to ensure that the impacted community has an opportunity to voice opposition to industries relocating in their neighborhoods.²⁹

LVEJO concedes that some industry existed in Little Village before people began moving to the neighborhood.³⁰ However, low-income residents were encouraged to move into the neighborhood because of zoning regulations and low housing costs.³¹ As seen in the MRC Polymers case, it is then that the environmental oppression continues with industries moving into the neighborhoods as a result of favorable zoning ordinances.³² Local politicians tend to fight for the industries, which gives them more power but oppresses their own communities.³³ Moreover, new zoning laws, developed by local politicians to encourage industries to locate in specific low-income, minority neighborhoods exacerbate the problem.³⁴ LVEJO recognizes that it is up to the community to take action on their own because there is a racial divide in the way that the federal government cleans toxic sites and punishes polluters, white, affluent communities generally see faster action and stiffer penalties for violations while poor minority communities see little or no action.³⁵ Wasserman stresses that the law will only be effective if the EPA used it to help the community rather than corporations.³⁶

FEDERAL POLICIES SHOULD EMPOWER VULNERABLE COMMUNITIES RATHER THAN INDUSTRY

Wasserman believes that the Executive Order is better than nothing.³⁷ It has served an important policy function in linking environmental justice to civil rights; yet the problem lies in showing that link and making a judge understand the impact on the community.³⁸ Grassroots organizers have been able to quote the law, but not realistically apply the law.³⁹ Environmental justice groups have found that there is so much bureaucracy involved that communi-

ties cannot figure out what to do or how to fight, and by the time they do figure it out, the public comment period is over.⁴⁰

Community participation is a critical obstacle to action.⁴¹ As it is structured now, the Executive Order requires the EPA to organize a period of public comment.⁴² However, environmental justice groups argue that the public comment periods are too short to educate the community and then allow community members to participate.⁴³ To combat this, environmental justice groups work to create opportunities to educate communities about the impact of industry on their neighborhoods.⁴⁴ LVEJO, for instance, leads Community Asset Toxic Tours, which are tours of different industrial sites in the neighborhood.⁴⁵ The theory behind these tours is that if people can see and identify industry's impact with all of their senses, they will be more likely to get involved in the movement.⁴⁶ LVEJO also works to promote youth leadership training to encourage kids to show initiative and build organizational skills in order to hand over responsibility.⁴⁷ However, a critical obstacle is that that children are generally interested in getting involved, but will not travel to other parts of the neighborhood for fear of gang retribution.⁴⁸ LVEJO, in response, is working to hold more activities at schools and in other parts of the neighborhood to encourage youth participation.⁴⁹

In addition to the community realities, the political reality facing the environmental justice movement is the economic consequences of requiring companies to reduce their environmental impact in these neighborhoods.⁵⁰ LVEJO is highly sensitive to the economic criticism of environmental justice laws because most of those who work in the factories also live in the community.⁵¹ Thus, LVEJO stresses a "just and rapid transition arguing that people inside the factories should not lose their jobs in the process."⁵²

To illustrate the importance of this transition, Wasserman pointed to a recent victory with a Waste Management garbage sorting facility in the neighborhood which had been running trucks 24 hours a day, 7 days a week.⁵³ After complaining to Alderman Munoz and receiving no response, the community formed block clubs and counted the number of trucks driving through the neighborhood.⁵⁴ After that information was given to the Alderman and the company, the company eliminated the third shift and reassigned people to another shift or another facility.⁵⁵

Until there is a shift in thinking, Wasserman argues, the government will continue to be an obstacle rather than an ally.⁵⁶ A longer period of public notification and comment would allow environmental justice groups to educate and empower communities to fight both industry and government.⁵⁷ This would force the EPA to take into account the realities of neighborhood demographics, thus expanding the government's understanding of the real impact on these communities.⁵⁸ As it stands, the EPA only holds the minimum number of public meetings regardless of actual public input.⁵⁹ Currently, Ms. Wasserman argues, the EPA is not willing to educate the community; rather it is assumed that the EPA is taking the community's needs into account.⁶⁰

The environmental trend could be an important moment for environmental justice groups if they can force a shift in government thinking from protection of industry to protection of vulnerable communities. Ultimately, environmental justice advocates agree that codifying the Executive Order is a small step in the right direction. However, without strong EPA action on behalf of these vulnerable communities, little will be accomplished.

NOTES

1 Interview with Kimberly Wasserman, Executive Director, Little Village Environmental Justice Organization, in Chicago, Ill. (Oct. 23, 2007).

2 *Oversight of the EPA's Environmental Justice Programs Hearing Before the Superfund and Environmental Health Subcommittee of the Senate, Committee on Environment and Public Works Hearing*, 109th Cong. 3 (2007) (statement of Peggy M. Shepard, Executive Director, Co-Founder, WE ACT For Environmental Justice).

3 Uma Outka, Submission ABA Environmental Justice 2004-2005 Essay Competition, *NEPA and Environmental Justice: Integration, Implementation and Judicial Review* at 6.

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.* at 6-7.

8 Exec. Order No. 12,898, 40 C.F.R. 1506.6 (February 11, 1994).

9 *Id.*

10 S. 642, 109th Cong. § 2 (b)(1)(A) and (B) (2007).

11 *Id.*

12 *Oversight of the EPA's Environmental Justice Programs Hearing Before the Superfund and Environmental Health Subcommittee of the Senate, Committee on Environment and Public Works Hearing*, *supra* note 2 at 6.

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 Interview with Kimberly Wasserman, *supra* note 1.

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 Amanda Griscom Little, *The Way We Live Now: Not in whose backyard*. NEW YORK TIMES September 2, 2007, Magazine, available at <http://www.nytimes.com/2007/09/02/magazine/02wwln-essay-t.html>.

51 Interview with Kimberly Wasserman, *supra* note 1.

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*